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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 193

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

WATERMAN STEAMSHIP CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED JULY 10, 1939

CERTIORARI GRANTED OCTOBER 9, 1939

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A [Caption omitted.]

1 In United States Circuit Court of Appeals for the Fifth Circuit

No. 8841

WATERMAN STEAMSHIP CORPORATION, PETITIONER

vs.

NATIONAL LABOR RELATIONS BOARD ET AL., RESPONDENTS

Order to file petition for review, etc.

Filed June 16, 1938

A petition for review of the order of the National Labor Relations Board entered on May 18, 1938, "In the Matter of Waterman Steamship Corporation and National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama" (Case No. C-375), having been presented to this Court,

It is ordered that said petition be filed and docketed as of June 16, 1938;

And it is further ordered that a copy of this order and said petition be forthwith served upon the National Labor Relations Board, and that said Board, upon service of such copies, forthwith certify and file in this Court a transcript of the entire record in the proceeding, in conformity to Rule XLI.

(Signed) RUFUS E. FOSTER,
U. S. Circuit Judge.

NEW ORLEANS, LA., *June 16, 1938.*

2 In United States Circuit Court of Appeals for the Fifth Circuit

[Title omitted.]
[File endorsement omitted.]

Petition for review of order of National Labor Relations Board

Filed June 16, 1938

To the Honorable the JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Now comes Waterman Steamship Corporation, a corporation organized and existing under the laws of the State of Alabama (sometimes hereinafter referred to as petitioner), and being aggrieved by the final order of the National Labor Relations Board hereinafter referred to, files this its petition pursuant to the provisions of Section 10 of the Act of Congress approved July 5th, 1935 (Ch. 372, 49 Stat.

453) commonly known, referred to, and cited as the National Labor Relations Act, or the Wagner Act (sometimes hereinafter referred to as Act), for a review of the said decision and order of the National Labor Relations Board (sometimes hereinafter referred to as Board) entered at Washington, D. C., on, to wit, the 18th day of May 1938, in which the Board ordered that petitioner cease and desist from certain practices denominated by the said Board as "unfair labor practices," grant passes on its ships to representatives of the National Maritime Union of America (sometimes hereinafter referred to as N. M. U.), reinstate certain named employees with full
3 pay, and made certain other orders all as more fully shown by the said decision and order, a copy of which is hereto attached, marked "Exhibit A" and expressly made a part hereof, and respectfully shows unto the Court as follows:

1. JURISDICTION

That petitioner is a corporation organized under and existing by virtue of the laws of the State of Alabama, having its principal office and place of business in the City of Mobile, County of Mobile and State of Alabama.

That respondent, National Labor Relations Board, is an agency of the Government of the United States of America, created pursuant to the Act of Congress approved July 5th, 1935 (Ch. 372, 49 Stat. 453) commonly known, referred to and cited at the National Labor Relations Act, or the Wagner Act.

That the respondents, J. Warren Madden, Edwin S. Smith, and Donald Wakefield Smith are the duly appointed, qualified and acting members of and compose and constitute the said National Labor Relations Board, and that the respondent, J. Warren Madden, is the duly appointed, qualified, and acting Chairman of said Board.

That as will hereinafter more fully appear, the acts complained of which the Board designated as unfair labor practices engaged in by petitioner, all occurred at the Port of Mobile, Alabama, within the Fifth Circuit, and within the jurisdiction of this Honorable Court.

2. STATEMENT OF PROCEEDINGS

That upon the complaint being made by the National Mari-
4 time Union of America that the Waterman Steamship Corporation, the petitioner, had engaged in, and was engaging in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act, the National Labor Relations Board, by the Regional Director for the Fifteenth Region, as Agent of the National Labor Relations Board, issued an amended complaint against petitioner in substance alleging that the petitioner, the Waterman Steamship Corporation, had engaged in certain unfair labor practices affecting commerce, as set forth and defined in the National Labor Relations Act. The amended complaint contained

the usual averments showing the nature of the business of the Waterman Steamship Corporation and averred that its business constituted commerce, transportation, and communication among the several states of the United States and between foreign countries and the United States. The amended complaint then charges that the Waterman Steamship Corporation terminated the employment of certain employees on the S. S. "Bienville" and the S. S. "Fairland." The complaint originally charged that two men on the S. S. "Pan American" were also discharged but the complaint was amended by striking out this averment as the S. S. "Pan American" did not belong to the Waterman Steamship Corporation. The complaint as amended further averred that petitioner refused to re-employ these former employees listed in the amended complaint and charged that the reason for not reinstating or re-employing these men was because they had joined a labor organization known as the National Maritime Union of America, with the exception of the said C. J. O'Connor, Second Assistant Engineer of the Steamship "Azalea City," and as to him for the reason that he joined and assisted a labor organization known as the Marine Engineers Beneficial Association (sometimes hereinafter referred to as M. E. B. A.), and because all of the above named employees had engaged in concerted activities with other employees of petitioner for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, other conditions of employment, and other mutual aid and protection. The amended complaint then avers that by its termination of the employment of the said employees and its refusal to re-instate them that petitioner interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and it thereby engaged in an unfair labor practice within the meaning of Section 8, subdivision (1) of the said Act, and that by such termination of employment of these seamen and its refusal to reinstate them, petitioner did discriminate in regard to the hire and tenure of employment of these employees and discourage membership in the National Maritime Union of America and thereby engaged in an unfair labor practice within the meaning of Section 8, subdivision (3), of the said Act. The amended complaint further averred that the Waterman Steamship Corporation refused to grant to representatives of the N. M. U. passes to board its ships for the purpose of soliciting membership for the N. M. U. The amended complaint then avers that by refusing to grant such passes the Waterman Steamship Corporation interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in an unfair labor practice within the meaning of Section 8, subdivision (1), of the Act, and the amended complaint concluded with the averment that the acts referred to therein constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7), of the said act.

Notice was given by the Regional Director that this matter would be heard on November 1st, 1937, in the Federal Building, in the City of Mobile, Alabama.

The Waterman Steamship Corporation, petitioner, filed its answer to the amended complaint, which answer was subsequently amended. As amended, this answer contained a denial that the Waterman Steamship Corporation had engaged in any unfair labor practices affecting commerce but admitted such formal allegations of the amended complaint as the nature of the Steamship Company's business, etc. The answer to the amended complaint then averred that the only occasion on which the employment of any of the employees on the vessels referred to was terminated was when their contract of employment ended at the termination of the voyage for which they were employed, with the exception that C. J. O'Connor voluntarily left the vessel of his own accord. The answer further averred that the employees in question were in each instance employed to make a particular voyage and when the S. S. "Bienville" arrived in Mobile all members of the crew were laid off as the "Bienville" was laid up for repairs and so far as the crew of the "Fairland" is concerned that upon the arrival of the "Fairland" in Mobile she went on dry dock and the members of the crew were discharged—the contract of employment of the crews of both these vessels having terminated as provided in the shipping articles and as is usual and customary in such cases. The crews of both vessels had signed in the regular form shipping articles for the duration of one particular voyage and at the end of that voyage they were no longer employees of the Waterman Steamship Corporation, and all contractual relations between them were terminated and at an end when they signed off before the United States Shipping Commissioner at the end of the voyage upon reaching the port of discharge. The answer then avers that petitioner had in no manner refused to reinstate the said employees except that in employing seamen for its vessels petitioner was obligated to comply with the terms of its contract with the International Seamen's Union of America (sometimes hereinafter referred to as I. S. U.). The answer further contained a specific denial that the Waterman Steamship Corporation had terminated the employment of any of the employees named in the amended complaint and refused to reinstate them for the reason that they had joined and assisted a labor organization known as the National Maritime Union of America, and the answer denied that petitioner terminated the employment of any of these seamen for the reason that they had engaged in any concerted activities with other employees of petitioner for the purpose of collective bargaining in respect to rates of pay, wages, etc. The answer averred that under the contract in force between the Waterman Steamship Corporation and the International Seamen's Union of America, it was expressly provided in Section 1 of Article II of the said contract as follows:

"SECTION 1. It is understood and agreed that as vacancies occur, members of the International Seamen's Union of America, who are

citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the respective positions; provided, however, that this Section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt re-shipment, or absence due to illness or accident."

The answer then averred that any effort on the part of the Waterman Steamship Corporation to violate its solemn contract with the International Seamen's Union of America would have been a breach of contract of a character which petitioner was not willing to be guilty of and which would subject petitioner to suit at the instance of the International Seamen's Union of America, and calls attention
8 to the fact that under subdivision 3 of Section 8 of the National Labor Relations Act it is specifically provided that nothing in the said Act, or in the National Industrial Recovery Act, as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made, and the answer further avers that the labor organization known as the International Seamen's Union of America was, when such agreement was made, and at all times referred to in the said answer, the representative of the employees as provided in Section 9 (a) of the said Act.

The answer further denied that by the termination of the employment of said employees in the manner set forth in the answer that petitioner had interfered with, restrained, or coerced its employees in the exercise of the rights guaranteed in Section 7 of the said Act, and denied that petitioner had engaged in an unfair labor practice within the meaning of Section 8, subdivision (1), of said Act, and averred that had petitioner refused to take the course which it has taken in the premises, and had it refused to abide by its contract with the International Seamen's Union of America, in giving preference of employment to members of the International Seamen's Union of America, that petitioner would have not only violated its contract with the International Seamen's Union of America, but that petitioner would have been liable in damages to the said organization. The petitioner further averred in its answer that none of the employees referred to in the amended complaint were refused employment on account of
9 their affiliation with the National Maritime Union of America but that after their prior employment had been terminated and it then became the problem of petitioner to obtain new crews when its vessels were ready to sail, that petitioner was obligated under the provisions of its contract with the International Seamen's Union of America to give preference of employment to members of that Union, and that the only reason that the former employees listed in the

amended complaint, or some of them, were not employed by petitioner when it obtained new crews for its vessels when they were ready to sail was due to the fact that these men were not members of the International Seamen's Union of America, from which organization petitioner, under its said contract, was required to obtain its employees, with the exception that the answer further avers that in the case of Edmund J. Pelletier his services were dispensed with because they were unsatisfactory. The answer further avers that the Waterman Steamship Corporation has not refused to reinstate any particular employees, but has only complied with its written contract with the International Seamen's Union of America under the terms of which petitioner was required to give preference of employment to members of that organization, and the petitioner denies that it discriminated against the employees referred to in the amended complaint in regard to the hire and tenure of employment, except that such employees could not, under the terms of the contract between petitioner and the International Seamen's Union of America, be re-employed unless they were members of the International Seamen's Union of America and thereby become entitled to preference of employment. The answer also denies that the Waterman Steamship Corporation had discouraged membership in the National Maritime Union of America, and denies that it has thereby engaged in an unfair labor practice within the meaning of Section 8, subdivision (3), of the said Act, and, on the contrary, petitioner averred that so far as it was concerned, it was entirely immaterial who become members of the National Maritime Union of America and who become members of the International Seamen's Union of America, so long as it could obtain capable, honest, industrious, faithful, and loyal employees without violating its contract with the International Seamen's Union of America. The answer then avers that the Waterman Steamship Corporation has at all times required, and will in the future require, such service from all of its employees and under its contract set forth in its answer it is required to give preference of employment to members of the International Seamen's Union of America, but that it has in no manner whatsoever discouraged, or attempted to discourage, membership of its employees in any maritime union or any other organization, nor has it been engaged in any manner in unfair labor practices within the meaning of the said Act.

The answer admits that the Waterman Steamship Corporation has refused to grant to the duly authorized representatives of the N. M. U. passes permitting such representatives to board ships of petitioner for the purpose of soliciting membership for the N. M. U., or for any other purpose, and the answer avers that petitioner demands and will insist upon its right to determine who shall and who shall not enter upon its privately owned property so long as no laws are violated. The answer further avers that petitioner has voluntarily entered into a contract with the International Seamen's Union of America, under the terms of which contract, under certain condi-

tions, petitioner permits authorized representatives of the International Seamen's Union of America to go on board the ships of petitioner, but such entrance upon the ships of petitioner is subject to regulations prescribed by petitioner and under no circumstances does petitioner permit such representatives of the International Seamen's Union of America to interfere with its employees while at work.

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By amendment to the answer petitioner averred that under date of July 13th, 1937, petitioner addressed and delivered to the Masters of all of its vessels the following order and regulations:

"To All Masters:

"In view of the fact that the National Labor Relations Board are now holding elections to determine whether the N. M. U. or the I. S. U. should represent the unlicensed members of our crews in collective bargaining, we have decided that we will not allow any delegates from either union to board our vessels for the purpose of soliciting memberships.

"(Signed) N. Nicolson,
N. Nicolson,
"*Executive Vice-President.*"

At the same time petitioner addressed and delivered to the agent for the I. S. U at Mobile, Alabama, a letter to the same effect. The answer further avers that the only purpose for which representatives of the I. S. U. were allowed to go on board ships of petitioner was for the purpose of collecting dues. The answer then sets out the reply which William Ross, agent for the I. S. U., wrote to petitioner, in which this agent advised the respondent that passes issued to the agents and delegates of the International Seamen's Union of America had not been used for the purpose of soliciting memberships but only in line with their duties to contact members of the International Seamen's Union of America, collect dues and attend to matters relative to the work and agreements existing.

The answer filed by the Waterman Steamship Corporation further averred that under its contract with the International Seamen's Union of America, which under certain conditions permits authorized representatives of the said International Seamen's Union of America to go on board petitioner's ships, that it was expressly provided that the International Seamen's Union of America should take out insurance which would protect petitioner against any claim, loss, damage, or liability for loss of life or injury occurring to a representative of the International Seamen's Union of America while on the property or while on board a vessel of petitioner, and the answer averred that petitioner would not permit any representative of the International Seamen's Union of America to enter on board its ships without first obtaining such insurance. The answer also averred that the parties sought to be protected by the provisions of Section 8 of the National Labor Relations Act are the employees of petitioner and not representa-

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tives of some union seeking to get petitioner's employees to join their union in preference to some other union.

The petitioner further averred in its answer that by refusing to permit representatives of the N. M. U. to have passes permitting these representatives to go on board the ships of petitioner the petitioner was not in any manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them under the provisions of Section 7 of the National Labor Relations Act. The answer denies that the Waterman Steamship Corporation by its refusal to grant such passes interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed under Section 7 of the National Labor Relations Act, and denied that by refusing to grant such passes it thereby engaged in an unfair labor practice within the meaning of Section 8, subdivision (1), of said Act.

Petitioner's answer then denies that the acts set forth in paragraphs 1 to 9, inclusive, of the amended complaint constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7), of the said Act, and avers that as a matter of fact a substantial number of the seamen who are listed in the amended com-
13 plaint as having been deprived of employment are, in fact, now employed by the Waterman Steamship Corporation and are working as members of the crews of some of its vessels, or in its warehouses, and the answer further avers, on information and belief, that a substantial number of the seamen listed in the amended complaint have given up their membership in the N. M. U. and are now members of the I. S. U.

The answer to the amended complaint concludes with the repetition of the statement that it is entirely immaterial to the Waterman Steamship Corporation as to what organization or union members of its crews belong to, but that in selecting its employees it must faithfully carry out the contract which it has with the International Seamen's Union of America, an A. F. of L. affiliate, which organization under the terms of the said contract supplies petitioner with the number and character of seamen desired. The answer further contained an express denial of all of the allegations of the amended complaint except such allegations thereof as are expressly admitted in the answer.

The Seamen's Reorganization Committee of the American Federation of Labor, the successor to the International Seamen's Union of America, an affiliate of the American Federation of Labor (sometimes hereinafter referred to as A. F. of L.), intervened in this proceeding, through its counsel, Alex T. Howard, and in this intervention averred that it is a duly organized and constituted labor union, duly affiliated with the American Federation of Labor, and that it was a self-organized and self-governing body. This petition of intervention averred that intervenor had met all of the requirements of the Wagner Act and as such labor union it was fully

qualified and capable of looking after the interests of its members insofar as negotiating contracts with ship-owners was concerned, and that it had actively and consistently looked after and
14 protected the interests of the employees who were members thereof in all matters of working conditions, wages, disputes, and working hours. The petition of intervention further averred that prior to the attempted organization of the National Maritime Union, the International Seamen's Union of America had negotiated a fair and binding contract between the seamen members thereof and the American Steamship Owners' Association and that the same continues in full force and effect, and that after the organization of the National Maritime Union the said National Maritime Union sought in every way to interfere with the said International Seamen's Union of America and in fact sought to destroy said union by all sorts of misrepresentations and unfair methods. The petition of intervention further averred that should the National Labor Relations Board, by its order, hold that the agents and officers of the National Maritime Union should be allowed passes to go on board ships of the Waterman Steamship Corporation while the intervenor held a contract with that Company, that the effect of this would be to aid and abet the National Maritime Union in doing one of the very acts forbidden by the Wagner Act, namely, preventing the carrying out of a contract made in good faith with that organization which was duly constituted and empowered to represent the men benefited by said contract.

The hearing before the Trial Examiner lasted for several days and during the taking of the testimony certain rulings were made by the Trial Examiner which we think were clearly erroneous, to which rulings exceptions were duly reserved. In addition to overruling or sustaining objections to certain evidence which was offered on the hearing, the Trial Examiner also made other rulings on motions which we respectfully submit were clearly erroneous, some of which rulings we will hereinafter discuss.

15 At the conclusion of the taking of all of the testimony in the case, petitioner, Waterman Steamship Corporation, filed a written motion (R., pp. 839–841), requesting that the complaint as last amended be dismissed. This motion was in words and figures as follows:

"Now comes the Waterman Steamship Corporation, the respondent in the above styled cause, and all the evidence having been introduced and all parties having rested and the evidence showing without dispute that the Waterman Steamship Corporation, under its contract with the International Seamen's Union of America, an affiliate of the American Federation of Labor, has employed on its ships members of the said International Seamen's Union of America, and the record further disclosing without controversy that the Waterman Steamship Corporation, during the existence of its contract with the said International Seamen's Union of America, has never been delayed in any manner whatsoever in the sailing of any of its large

fleet of vessels, and the National Labor Relations Act, under which this proceeding is instituted, being termed 'An Act to diminish the causes of labor disputes burdening or obstructing interstate or foreign commerce, etc.,' and it now appearing conclusively from the evidence that neither interstate nor foreign commerce has ever been in any manner burdened or obstructed by the action of the Waterman Steamship Corporation, the respondent, now complained of, the said Waterman Steamship Corporation now moves that the complaint as last amended filed against it in this proceeding be dismissed on the following separate and several grounds:

"1. For that the evidence fails to show that the respondent has been guilty of any violation of the National Labor Relations Act.

"2. For that the evidence fails to show that the respondent has been guilty of any unfair labor practices as defined in the National Labor Relations Act.

"3. For that the evidence fails to show that the respondent has interfered with, restrained, or coerced employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

"4. For that the evidence fails to show that the respondent has by discrimination in regard to hire or tenure of employment or any term or condition of employment encouraged or discouraged membership in any labor organization.

"5. For that the evidence shows that the respondent, at all times mentioned in the complaint, was bound by a contract recognized as valid by the National Labor Relations Act to give preference of employment to members of the International Seamen's Union.

16 "6. For that the evidence shows that the refusal of the respondent to grant passes on board its ships or organizers of the National Maritime Union did not have the effect of interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act."

The action of the Trial Examiner in denying as to all of the grounds stated, this motion (R., pp. 839-841) was presented in Exception No. 1 on file in this cause.

The Trial Examiner made an Intermediate Report in which he took the position, in effect, that when the Waterman Steamship Corporation needed crews for its two vessels, the S. S. "Bienville" and the S. S. "Fairland," when they were ready to sail on their next trips, it should have given employment to the seamen who had previously been employed by it on earlier trips of the vessels, which seamen had then joined the N. M. U., rather than giving preference of employment to members of the I. S. U., as provided for in its contract,—the theory of the Trial Examiner being that when a seaman is employed on a vessel, even when expressly employed for one particular voyage, that his employment is of a continuous nature and is not terminated at the end of the voyage for which he was employed, as provided by the express terms of the shipping articles under which he entered the service of the steamship company. The

Trial Examiner's findings would require a steamship company to disregard its preferential contract with one union and give employment to members of other unions, without discrimination, notwithstanding this preferential contract. The Trial Examiner's entire Intermediate Report was based on the erroneous assumption that a seaman's employment is of a continuous nature.

Upon the filing of the Intermediate Report by the Trial Examiner the Waterman Steamship Corporation filed written exceptions thereto in all respects as provided by Section 34 of the Rules and Regulations promulgated by the National Labor Relations Board, such exceptions setting out in detail those portions of the Intermediate Report filed by Trial Examiner William Seagle as to which such exceptions were taken, all as more fully shown by the Record in this proceeding, and upon the filing of such exceptions the Waterman Steamship Corporation requested the Board to set this matter for hearing on a day certain and permit oral argument. This was done and the Waterman Steamship Corporation, through its counsel, appeared before the National Labor Relations Board at its office in Washington, D. C., on March 8th, 1938, and argued the case orally, in addition to filing at that time a written brief and argument in support of the exceptions to the Intermediate Report and on submission of the case on final hearing.

The said National Labor Relations Board under date of May 18th, 1938, rendered its final decision and order in the premises, a true and correct copy of which decision and order is hereto attached, marked "Exhibit A," and expressly made a part hereof.

Upon receipt of notice of such decision and order the Waterman Steamship Corporation, as provided in subdivision (e) of paragraph 2 of the said Order notified Charles H. Logan, Regional Director for the Fifteenth Region, in writing, that it felt aggrieved by the final order of the National Labor Relations Board and as provided for in subdivision (f) of Section 10 of the National Labor Relations Act, would seek a review of the said Order in the Circuit Court of Appeals of the United States.

Your petitioner further respectfully shows unto the Court that while it earnestly insists that it should not be called upon to reinstate any of the seamen in question, and while it earnestly insists that it should not be called upon to pay anything whatsoever to the said seamen for back wages or maintenance, yet if petitioner should be by this Court required to comply with the orders of the Labor Board, the pay and maintenance of the former employees of the Waterman Steamship Corporation referred to in said decision and order is running at the rate of many hundreds of dollars per month; that this liability is a cumulative and continuing one; that in view of the time which ordinarily lapses in connection with the carrying of appeals from hearings through the Courts, many months will be consumed before there is a final termination of the proceedings in this cause; that without relief which will so

provide that during the pendency of this proceeding no additional liability, such as provided in the Board's order, shall accrue to the seamen in question, such liability will reach such large proportions that petitioner may be compelled to comply with the Board's order and not press its appeal to a final conclusion; that this would deprive petitioner of due process of law, in the nature of a review, as under such circumstances petitioner would run the risk of confiscation of its property while having a judicial body pass upon the merits of its controversy and that for this and other reasons petitioner is entitled to an order providing that no additional liability to the seamen in question shall accrue until there has been a final determination of this cause.

Petitioner further respectfully shows unto the Court that while the National Labor Relations Board orders the Waterman Steamship Corporation to reinstate, with full pay, forty-three seamen, yet only five members of the crew of the "Bienville" and only one member of the crew of the "Fairland" testified at the hearing, and for aught that appears from the Record in this cause, all of the other seamen listed in Appendix A and in Appendix B to the decision and order of the National Labor Relations Board have obtained other employment, equally remunerative, since their employment with the Waterman Steamship Corporation terminated under the provisions of the shipping articles at the end of the voyage in question,
19 and petitioner respectfully shows to the Court that there is no presumption that these seamen, aside from the six seamen who testified at the hearing, are unemployed, or that they have suffered any financial loss by reason of the Waterman Steamship Corporation being unable to reemploy them without violating its contract with the I. S. U.

Your petitioner further respectively shows unto the Court that the National Labor Relations Act, in giving certain weight to the findings of the National Labor Relations Board as to the facts, contemplates that the members of the said Board would either hear the testimony given from the witness stand by witnesses or else read the testimony of the witnesses taken orally before the Trial Examiner, and also read the documentary evidence introduced on the hearing before undertaking to make any findings of fact, and petitioner avers that in this case no member of the said National Labor Relations Board was present at the time the large number of witnesses shown by the Record were examined, nor has any member of the said Board read the testimony of the said witnesses, but in lieu thereof the said National Labor Relations Board, to which certain powers were delegated by the Act of Congress, undertook to delegate to some of their employees the power to examine the record and reach a conclusion on which their findings of fact should be based. Your petitioner respectfully shows unto the Court that any findings of fact made under such circumstances can be given no weight whatsoever by any Court.

Petitioner further respectfully shows unto the Court that under the provisions of subsection (c) of Section 10 of the National Labor Relations Act, the National Labor Relations Board is only permitted to state its "findings of fact" and issue and cause to be served the orders therein contemplated, when the said Board has first considered all of the testimony taken, and there is no authority in the said National Labor Relations Act or in any other statute
20 which authorizes or permits the said National Labor Relations Board to make any findings of fact in a case in which the only information which the members of the said Board has as to the testimony introduced on the hearing is such information as has been furnished to members of the said Board by some employees of their department.

3. ASSIGNMENTS OF ERROR

Petitioner, as a basis for review, makes the following separate and several assignments of error, to-wit:

1. The Board's findings of fact as to unfair labor practices on the part of petitioner towards members of the crew of the S. S. "Bienville" are not supported by sufficient evidence.

2. The Board's findings of fact as to unfair labor practices on the part of petitioner towards members of the crew of the S. S. "Fairland" are not supported by sufficient evidence.

3. The evidence affords no reasonable basis for the conclusions of the Board as embraced within its findings of fact that there were unfair labor practices on the part of petitioner towards the crew of the S. S. "Bienville."

4. The evidence affords no reasonable basis for the conclusions of the Board as embraced within its findings of fact that there were unfair labor practices on the part of petitioner towards the crew of the S. S. "Fairland."

5. Neither the Board nor any member thereof heard the witnesses testify nor did any member of the Board read the testimony of the witnesses and the documentary evidence introduced on the hearing before undertaking to make the findings of fact, and the Board's findings of fact under such circumstances carry no weight.

6. It would appear from the findings of fact and conclusions of law upon which the decision and order of the Board is predi-
21 cated that the Board has not applied governing principles of law in construing the contract existing between petitioner and the International Seamen's Union of America, which union was designated or selected by the unlicensed seamen upon petitioner's vessels as their representative for the purposes of collective bargaining.

7. It would appear from the findings of fact and conclusions of law upon which the order of the Board is predicated that the Board has not applied governing principles of law in construing the shipping articles under which the unlicensed seamen in question were employed by petitioner.

8. It would appear from the findings of fact and conclusions of law upon which the order of the Board is predicated that the Board has not properly construed that provision of the contract existing between petitioner and the International Seamen's Union of America under the terms of which petitioner is required, as vacancies occur, to give preference of employment to members of the International Seamen's Union of America.

9. It would appear from the decision and order of the Board that its findings of fact are predicated upon erroneous conclusions of law.

10. It would appear from the decision and order of the Board that its findings of fact are predicated upon an erroneous conclusion of law in the construction of the shipping articles under which the seamen in question were employed by petitioner.

11. It would appear from the decision and order of the Board that its findings of fact are predicated upon an erroneous conclusion of law in the construction of the contract between petitioner and the International Seamen's Union of America.

12. It would appear from the findings of fact and conclu-
22 sions of law upon which the order of the Board is predicated that the Board has erroneously found that the employment of the seamen in question was of a continuous nature.

13. It would appear from the findings of fact and the conclusions of law upon which the order of the Board is predicated, that the Board has overlooked and failed to consider that the rule of employment as to seafaring men is not the same as that of men employed on land; that because of the peculiar nature of the employment of seafaring men, at the termination of the voyage covered by the shipping articles their accounts with the ship owner are settled and their employment is automatically terminated.

14. The finding of fact by the Board that there is an actual maritime practice or custom by which the employment of seamen is of a continuous nature has no application to a case where the record shows without controversy that the seamen in question sailed under shipping articles providing for one voyage only, which shipping articles expressly set out the contract between the seamen and their employer.

15. The finding of fact by the Board that there is an actual maritime practice or custom by which the employment of seamen is of a continuous nature is erroneous.

16. It would appear from the findings of fact of the Board, upon which its order is predicated, that the Board would deny to the petitioner the right to terminate the employment of the seamen at the conclusion of any voyage and the return of the vessel to a port of discharge, contrary to the right and privilege secured to the petitioner by the contract of employment.

17. It would appear from the findings of the Board and its order predicated thereon that the Board has erroneously concluded that the complaining seamen were discharged by petitioner as a result of

such seamen joining a labor organization known as the National Maritime Union of America.

18. The decision and order of the Board required petitioner to issue passes to go on board petitioner's ships to representatives of the National Maritime Union of America, although it does not appear from the record that there is any duty on the part of petitioner to issue such passes.

19. There is nothing in the record supporting the finding of the Board that petitioner permitted representatives of the International Seamen's Union of America to board its vessels to solicit membership in the International Seamen's Union of America.

20. The Board without authority required petitioner to issue passes to go on board petitioner's ships to representatives of the National Maritime Union of America.

21. The Board was in error in finding that any discrimination was made between representatives of the National Maritime Union of America and the International Seamen's Union of America in the matter of petitioner issuing passes to go on board its ships as the record shows the petitioner refused to issue passes to representatives of either union to go on board it ships for the purpose of soliciting memberhip.

22. The Board in its findings failed to give proper weight to the fact that under the preferential contract between the petitioner and International Seamen's Union of America petitioner was required to permit authorized representatives of said Union to go on board its ships, subject to regulations prescribed by petitioner.

23. The finding of fact by the Board that the petitioner, in refusing to grant passes to go on board its ships to representatives of the National Maritime Union of America, has in any manner interfered with, restrained, or coerced its employees in the exercise of any of the rights guaranteed under the National Labor Relations Act, is not supported by evidence.

24. The finding by the Board that the refusal of petitioner to permit representatives of the National Maritime Union of America to enter on the privately owned vessels of petitioner in any manner interfered with, restrained, or coerced petitioner's employees in the exercise of their rights guaranteed under the National Labor Relations Act is an erroneous conclusion of law by the Board.

25. The Board was in error in finding that where a ship was tied up for repairs that the employment of the crew was not terminated.

26. The Board was in error in finding that where a ship was tied up for repairs the employment of the crew theretofore on the said ship continued unless terminated by some action of the employer or employee other than the discharge under the terms of its shipping articles.

27. The action of the Board which required petitioner, when its ships which had been tied up for repairs were ready to sail, to violate its contract with the International Seamen's Union of America by

giving preference of employment to members of the National Maritime Union was erroneous.

28. The Board was in error in finding that the petitioner used its contract with the International Seamen's Union as a pretext for refusing to re-ship the old crews.

29. The Board was in error in finding that E. J. Pelletier was discharged by petitioner on account of his affiliation with the National Maritime Union, as the record shows conclusively that E. J. Pelletier was discharged because his services were unsatisfactory.

30. The record shows that there was insufficient evidence to support the findings of fact by the Board that the petitioner laid off and refused to reinstate the employees whose names are listed in Appendix A to the decision and order of the Board.

31. The Board erred in concluding that by any action in respect to the employees listed in Appendix A, petitioner has discriminated against such employees with respect to hire and tenure of employment and has discouraged membership in the National Maritime Union.

25 32. The record shows that there was insufficient evidence to support the findings of fact by the Board that the petitioner laid off and refused to reinstate the employees whose names are listed in Appendix B to the decision and order of the Board.

33. The Board erred in concluding that by any action in respect to the employees listed in Appendix B, petitioner has discriminated against such employees with respect to hire and tenure of employment and has discouraged membership in the National Maritime Union.

34. The Board was in error in finding that petitioner discharged and refused to reinstate C. J. O'Connor because of his participation in the collective action described in the decision and order.

35. The Board was in error in finding that by petitioner's action in the C. J. O'Connor case petitioner discouraged membership in the M. E. B. A.

36. The Board was in error in finding that the activities of the petitioner referred to in the decision and order tended to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

37. The Board erred in ordering petitioner to issue passes to its ships in equal numbers to both representatives of the National Maritime Union and the International Seamen's Union.

38. The Board erred in finding that the employees whose employment terminated under the circumstances shown in the record are entitled to reinstatement and back pay.

39. The Board erred in finding in its "Conclusions of Law" that the petitioner had interfered with, restrained or coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

40. The Board erred in finding in its "Conclusions of Law" that petitioner had engaged in, and is engaging in, unfair labor practices within the meaning of section 8, subdivision (1) of the Act.

26 41. The Board erred in finding that by any action of petitioner in regard to the hire or tenure of employment of any of its employees listed in Appendices A and B, the petitioner thereby discouraged membership in the National Maritime Union of America.

42. The Board erred in finding that petitioner had been guilty of discrimination in regard to the hire and tenure of employment of C. J. O'Connor.

43. The Board erred in finding that petitioner, by any action in regard to the hire or tenure of employment of C. J. O'Connor, discouraged membership in the Marine Engineers' Beneficial Association, the record showing that petitioner had a contract with M. E. B. A. and that all of petitioner's engineers belonged to that Union.

44. The Board erred in finding that petitioner has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8, subdivision (3) of the Act.

45. The Board erred in finding that the practices set forth in its decision and order are unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act.

46. The Board erred in ordering petitioner to cease and desist from refusing to issue passes to authorized representatives of the National Maritime Union of America in equal numbers and under the same conditions as it grants passes to representatives of the International Seamen's Union of America, or its successor.

47. The Board erred in ordering petitioner to cease and desist from discouraging membership in the National Maritime Union of America, Marine Engineers' Beneficial Association, or any other labor organization of its employees, by laying off, discharging, or refusing to reinstate any of its employees, or in any manner discriminating in regard to their hire or tenure of employment or any terms and conditions of their employment, the record not showing that the petitioner has engaged in or is engaging in such practices.

27 48. The Board erred in ordering petitioner to cease and desist from in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the National Labor Relations Act, the record not showing that the petitioner has engaged in or is engaging in such practices.

49. The Board erred in ordering petitioner to grant passes to authorized representatives of the National Maritime Union of America in equal numbers and under the same conditions as it grants passes to representatives of the International Seamen's Union of America or its successor.

50. The Board erred in ordering petitioner to offer to the persons listed in Appendix A immediate and full reinstatement to their former

positions, without prejudice to their seniority and other rights and privileges.

51. The Board erred in ordering petitioner to offer to the persons listed in Appendix B immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges.

52. The Board erred in ordering petitioner to offer to C. J. O'Connor immediate and full reinstatement to his former position, without prejudice to his seniority and other rights and privileges.

53. The Board erred in ordering petitioner to offer to E. J. Pelletier immediate and full reinstatement to his former position, without prejudice to his seniority and other rights and privileges.

54. The Board erred in ordering petitioner to make whole the persons listed in Appendix A, for any loss of pay they have suffered by petitioner's alleged discriminatory acts, by payment to each
28 of them of a sum of money equal to that which each would normally have earned as wages—including therein the reasonable value of his maintenance on ship board from the time that the ship he was employed on sailed again after his discharge or lay-off—during the period from the date of such alleged discrimination against each of them to the date of offer of reinstatement, less any amount each has earned during that period.

55. The Board erred in ordering petitioner to make whole the persons listed in Appendix B, for any loss of pay they have suffered by petitioner's alleged discriminatory acts, by payment to each of them of a sum of money equal to that which each would normally have earned as wages—including therein the reasonable value of his maintenance on ship board from the time that the ship he was employed on sailed again after his discharge or lay-off—during the period from the date of such alleged discrimination against each of them to the date of offer of reinstatement, less any amount each has earned during that period.

56. The Board erred in ordering petitioner to make whole C. J. O'Connor, for any loss of pay he has suffered by petitioner's alleged discriminatory acts, by payment to him of a sum of money equal to that which he would normally have earned as wages—including therein the reasonable value of his maintenance on ship board from the time that the ship he was employed on sailed again after his discharge or lay-off—during the period from the date of such alleged discrimination against him to the date of offer of reinstatement, less any amount he has earned during that period.

57. The Board erred in ordering petitioner to make whole E. J. Pelletier, for any loss of pay he has suffered by petitioner's alleged discriminatory acts, by payment to him of a sum of money equal to that which he would normally have earned as wages—including therein the reasonable value of his maintenance on ship board from the time that the ship he was employed on sailed again after
29 his discharge or lay-off—during the period from the date of

such alleged discrimination against him to the date of offer of reinstatement, less any amount he has earned during that period.

58. The Board erred in ordering petitioner to post immediately notices to its employees in conspicuous places on its docks and on its vessels, and to maintain such notices for a period of at least thirty (30) consecutive days from the date of posting, stating that the petitioner will cease and desist in the manner provided in said decision and order.

59. The Board erred in upholding the ruling of the Trial Examiner in refusing to grant petitioner's motion to dismiss the complaint as last amended, which motion was in words and figures as follows:

"Now comes the Waterman Steamship Corporation, the respondent in the above styled cause, and all the evidence having been introduced and all parties having rested and the evidence showing without dispute that the Waterman Steamship Corporation, under its contract with the International Seamen's Union of America, an affiliate of the American Federation of Labor, has employed on its ships members of the said International Seamen's Union of America, and the record further disclosing without controversy that the Waterman Steamship Corporation, during the existence of its contract with the said International Seamen's Union of America, has never been delayed in any manner whatsoever in the sailing of any of its large fleet of vessels, and the National Labor Relations Act, under which this proceeding is instituted, being termed 'An Act to diminish the causes of labor disputes burdening or obstructing interstate or foreign commerce, etc.,' and it now appearing conclusively from the evidence that neither interstate nor foreign commerce has ever been in any manner burdened or obstructed by the action of the Waterman Steamship Corporation, the respondent, now complained of, the said Waterman Steamship Corporation now moves that the complaint as last amended filed against it in this proceeding be dismissed on the following separate and several grounds:

"1. For that the evidence fails to show that the respondent has been guilty of any violation of the National Labor Relations Act.

"2. For that the evidence fails to show that the respondent has been guilty of any unfair labor practices as defined in the National Labor Relations Act.

"3. For that the evidence fails to show that the respondent has interfered with, restrained or coerced employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

"4. For that the evidence fails to show that the respondent has by discrimination in regard to hire or tenure of employment or any term or condition of employment encouraged or discouraged membership in any labor organization.

"5. For that the evidence shows that the respondent, at all times mentioned in the complaint, was bound by a contract

recognized as valid by the National Labor Relations Act to give preference of employment to members of the International Seamen's Union.

"6. For that the evidence shows that the refusal of the respondent to grant passes on board its ships to organizers of the National Maritime Union did not have the effect of interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act."

60. The Board erred in ordering petitioner to reinstate, with full pay, any seamen other than those shown by the record to have been unemployed since the termination of their employment with petitioner.

61. In the absence of proof as to what, if any, employment the seamen listed in Appendix A and Appendix B had obtained since their employment with the Waterman Steamship Corporation was terminated, the Board erred in ordering their reinstatement, with full pay.

62. The Board erred in its failure to take into consideration, in rendering its final decision and order, the fact that petitioner had been threatened with suit by the International Seamen's Union of America, in the event petitioner breached its contract and failed to give preference of employment to members of that union.

63. The Board erred in failing to take into consideration, in rendering its final decision and order, the fact that petitioner was legally bound by its written contract to give preference of employment to members of the International Seamen's Union of America.

4. PRAYER

Wherefore, the petitioner petitions this Court for a review of the decision, findings, and order of the National Labor Relations Board dated May 18th, 1938, and prays:

(1) That the Court take jurisdiction of this cause and that a copy of this petition and the process of this Court be served upon
31 respondents, National Labor Relations Board, and upon J. Warren Madden as Chairman and member of said Board, and Edwin S. Smith, and Donald Wakefield Smith as members thereof, as provided by Section 11 (5) of the National Labor Relations Act.

(2) That the National Labor Relations Board be directed and required by an appropriate order of this Court to forthwith certify and file in this Court, pursuant to Section 10 (f) of the National Labor Relations Act, and pursuant to Rule XLI of this Honorable Court, a transcript of the entire record in the proceeding, including all exhibits; the originals of all papers filed with the Board; the transcript of the testimony; all motions filed with the Board and with the Trial Examiner; all orders made by the Board, including the order of May 13th, 1938, incorporating in the record certain

affidavits, together with the said affidavits; and the final decision and order of the Board dated May 18th, 1938.

(3) That the respondents, J. Warren Madden as Chairman and member of the National Labor Relations Board, and Edwin S. Smith, and Donald Wakefield Smith as members thereof, be required to answer on oath whether or not they, or any of them, were present at the time the witnesses were examined and whether or not they, or any of them, have read the testimony of the said witnesses and the documentary evidence introduced on the hearing of this cause.

(4) That this petition for review be preferred and heard and determined expeditiously as provided in Section 10 (i) of the National Labor Relations Act.

(5) That the said decision, findings, and order, and the mandatory and injunctive requirements and provisions thereof as to the petitioner be each, in all respects, annulled, vacated, set aside, and held for naught.

(6) That an order be entered providing that no additional liability to the seamen in question shall accrue until there has been a final determination of this cause.

(7) That the National Labor Relations Board be ordered and directed to forthwith dismiss the complaint and all proceedings in this cause.

(8) That the petitioner shall have such other, further, dif-
82 ferent, and general relief as may be just and proper in the premises.

Executed this 14th day of June 1938.

[SEAL] WATERMAN STEAMSHIP CORPORATION,
By N. NICOLSON, *Executive Vice-President.*

GESSNER T. McCORVEY,
C. A. L. JOHNSTONE, JR.,
Attorneys for Petitioner.
McCORVEY, McLEOD, TURNER & ROGERS,
of Counsel for Petitioner.

[*Duly sworn to by Nicolson; jurat omitted in printing.*]

83 *Exhibit A to petition for review*

[Omitted. Printed side page 182 post.]

63 In United States Circuit Court of Appeals for the Fifth Circuit

[Title omitted.]

Certificate of the National Labor Relations Board

The National Labor Relations Board, by its Secretary, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board, Series 1, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate

transcript of the entire record in a proceeding had before said Board entitled "In the Matter of Waterman Steamship Corporation and National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama," the same being Case No. C-375 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

1. Copy of charge filed by National Maritime Union and sworn to July 7, 1937.

2. Copy of amended charge filed by said union and sworn to October 7, 1937.

3. Copy of complaint and notice of hearing issued by the National Labor Relations Board October 9, 1937.

4. Copy of amended complaint and notice of hearing issued by the National Labor Relations Board October 20, 1937.

5. Copy of respondent's answer to the amended complaint,
64 verified October 25, 1937.

6. Respondent's amendment to answer to amended complaint.

7. Petition to intervene filed by the Seamen's Reorganization Committee, American Federation of Labor, sworn to November 2, 1937.

8. Certified copy of order designating William Seagle Trial Examiner dated October 28, 1937.

9. Respondent's amendment to answer to amended complaint, sworn to November 2, 1937.

Documents listed hereinabove under items 1–9, inclusive, are contained in the exhibits and included under the following item:

10. Stenographic transcript of testimony before William Seagle, Trial Examiner for the National Labor Relations Board, on November 1, 2, 3, 4, and 5, 1937, together with all exhibits introduced in evidence.

11. Copy of intermediate report of Trial Examiner Seagle dated January 17, 1938.

12. Copy of respondent's exceptions to the intermediate report filed January 31, 1938.

13. Copy of notice of hearing for purpose of oral argument, dated February 7, 1938.

14. Copy of notice of advancement of hearing dated February 11, 1938.

15. Copy of exceptions to the intermediate report filed by Seamen's Reorganization Committee of the American Federation of Labor February 11, 1938.

16. List of appearances at oral argument held March 8, 1938.

17. Copy of order, dated May 13, 1938, incorporating matters in the record as respondent exhibits 1–13 for identification.

18. Copy of decision, findings of fact, conclusions of law, and order of the National Labor Relations Board issued May 18,
65 1938, together with affidavit of service and United States Post Office return receipts thereof.

In testimony whereof the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 20th day of July 1938.

[SEAL]

Nathan Witt,
NATHAN WITT, *Secretary*,
National Labor Relations Board.

66

[Copy]

Before the National Labor Relations Board, Fifteenth Region

IN THE MATTER OF WATERMAN STEAMSHIP CORPORATION AND NATIONAL MARITIME UNION

Charge

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Waterman Steamship Corporation, Masonic Building, New Orleans, La., has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of said Act, in that it, by its officers, agents, and employees, did discharge the below named employees on the dates indicated, because of their membership in and affiliation with the National Maritime Union, and has, at all times since, refused to reinstate them.

S. S. "BIENVILLE"

Lewis Jones, Wiper, July 6, 1937; W. Gold, Oiler, July 5, '37; Otto Ortleb, Fireman, July 5, '37; Eric Butcher, Wiper, July 5, '37; Fubert A. Bodaen, A. B., July 5, '37; E. X. Rhone, Steward, July 5, 1937; Herbert Hall, Fireman, July 5, '37; James Dobbs, O., July 5, 1937; Robert Crawford, Oiler, July 5, '37; R. S. Kettlewell, O. S., July 5, '37; Bowen, R., Bosun, July 5, 1937; J. C. Stewart, Fireman, July 5, 1937; C. E. Smith, Oiler, July 5, 1937.

S. S. "FAIRLAND"

James M. Jefferies, A. B., July 6, '37; Wseley Howard, O. S., July 6, '37; M. J. Burgess, A. B., July 6, '37; E. Wilkerson, Oiler, July 6, '37; C. W. Wilson, Fireman, July 6, '37; J. P. Hamilton, O. S., July 6, '37; E. J. Pelletier, Steward, July 6, '37; B. H. Ingram, A. B., July 6, '37; Jerry Turner, July 6, '37; Archie McWiggen, Bosun, July 6, '37.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

NATIONAL MARITIME UNION,
By (Sd.) K. K. OWEN,
Mobile Agent National Maritime Union,
76 Government St.,
Engine Division, Mobile, Alabama.

Subscribed and sworn to before me this 7th day of July 1937.

[SEAL] (Sd.) CARL M. BOOTH,
Notary Public, Mobile County, Ala.

My commission expires Aug. 5, 1940.

67 [Copy]

Before the National Labor Relations Board, Fifteenth Region

[Title omitted.]

Amended charge

Filed October 7, 1937

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Waterman Steamship Corporation, Masonic Building, New Orleans, La., has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) of said Act, in that it, by its officers, agents, and employees, while engaged at the Port of Mobile, State of Alabama, did refuse to grant, and has at all times since failed to grant to the duly authorized representatives of the National Maritime Union passes permitting such representatives to board ships of the Respondent for the purpose of soliciting membership for the National Maritime Union, while said ships were docked at the Port of Mobile, State of Alabama.

It, by its officers, agents, and employees, did discharge the below named employees on the dates indicated, because of their membership in and affiliation with the National Maritime Union, and has, at all times since, refused to reinstate them.

S. S. "BIENVILLE"

Basil Brown, Water tender, July 6, 1937; M. J. Burgess, Able Seaman, July 6, 1937; James Gilroy, Able Seaman, July 6, 1937; Kenneth E. Graham, Messman, July 6, 1937; J. P. Hamilton, Ordinary Seaman, July 6, 1937; Wesley Howard, Ordinary Seaman, July 6, 1937; B. H. Ingram, Able Seaman, July 6, 1937; James M. Jeffries, Able Seaman, July 6, 1937; Marlyn E. Jones, Wiper, July 6, 1937; A. C. King, Ordinary Seaman, July 6, 1937; Herman Lee, Oiler,

ly 6, 1937; Archie McWiggen, Bosun, July 6, 1937; J. B. Morrow, iter, July 6, 1937; Edmund J. Pelletier, Steward, July 6, 1937; Reynolds, Fireman, July 6, 1937; William Redner, Watertender, ly 6, 1937; R. F. Schuettner, Messboy, July 6, 1937; C. W. (Jerry) rner, 4th Oiler, July 6, 1937; Earl Wilkerson, Oiler, July 6, 1937; W. Wilson, Fireman, July 6, 1937; Dudley Beuk, Fireman, July 6, 7; Herman Zilberman, Able Seaman, July 6, 1937; R. Reynolds, ssman, July 6, 1937; F. Gordy, Oiler, July 6, 1937; — Lopez, Chief ok, July 6, 1937.

S. S. AZALEA CITY"

C. J. O'Connor, Second Asst. Engineer, August 16, 1937.

S. S. "PAN AMERICAN"

John R. Roberts, June 23, 1937; Joseph R. McCoy, June 23, 1937.

S. S. "FAIRLAND"

Columbus Anderson, Messboy, July 5, 1937; Andrew Benron, Mess-, July 5, 1937; Fulbert A. Bodden, Able Seaman, July 5, 1937; ward Bowen, Bosun, July 5, 1937; Reese Bryars, Able Seaman, ly 16, 1937; Eric Butcher, Wiper, July 5, 1937; Robert Crawford, er, July 5, 1937; James Dobbs, Ordinary Seaman, July 5, 1937; Gold, Oiler, July 5, 1937; Herbert Hall, Fireman, July 5, 1937; vis Jones, Wiper, July 6, 1937; Raymond S. Kettewell, Ordinary man, July 5, 1937; Otto K. Ortleb, Fireman, July 5, 1937; Charles rkins, July 5, 1937; Edward X. Rhone, Steward, July 5, 1937; se J. Scott, July 5, 1937; C. E. Smith, Oiler, July 5, 1937; James Stewart, Fireman, July 5, 1937; Bennett Baptiste, Cook, July 5, 7.

The undersigned further charges that said unfair labor practices unfair labor practices affecting commerce within the meaning of d Act.

Name and address of person or labor organization making the rge. (If made by a labor organization, give also the name and cial position of the person acting for the organization.)

NATIONAL MARITIME UNION,
By J. L. COOK,
Representative pro tem.

Subscribed and sworn to before me this 7th day of October 1937.

JACK W. DOLAN,
Notary Public.

68 Before the National Labor Relations Board,
Fifteenth Region

Case No. XV-C-75

[Title omitted.]

Complaint and notice of hearing

It having been charged by the National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama, hereinafter called the N. M. U., that the Waterman Steamship Corporation, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act, the National Labor Relations Board, by the Regional Director for the Fifteenth Region, as agent of the National Labor Relations Board designated by National Labor Relations Board Rules and Regulations, Series 1, Article IV, Section 1, hereby issues its Complaint and alleges the following:

1. The respondent is and has been since June 10, 1919, a corporation organized under and existing by virtue of the laws of the State of Alabama, having its principal office and place of business in the City of Mobile, County of Mobile, State of Alabama, and is now and has continuously for a long period of time been engaged in the transportation of passengers and freight by steamship from
69 and between the following ports: New York City, New York; Philadelphia, Pennsylvania; Baltimore, Maryland; Savannah, Georgia; Jacksonville, Tampa, and Panama City, Florida; Mobile, Albama; New Orleans, Louisiana; New Bedford and Boston, Massachusetts; Porto Rico, Cuba, and Newfoundland; Liverpool, London, Manchester, West Hartlepool, Southampton, and Newcastle, England; Glasgow, Scotland; Bremen and Hamburg, Germany; Rotterdam, Holland; Antwerp, Belgium; LeHavre, France, and at other ports, and has maintained piers, terminal and other necessary facilities for loading and unloading freight at New York City, New York; Tampa, Jacksonville, and Panama City, Florida; New Orleans, Louisiana, Savannah, Georgia; Mobile, Alabama; Philadelphia, Pennsylvania; New Bedford and Boston, Massachusetts; the Republic of Cuba and at other ports, and has been operating tugs and lighters at points above-named for the purpose of handling its ships and carrying cargo, and has maintained squads of longshoremen for the purpose of loading and unloading its vessels at various points above named.

2. The respondent maintains, and has for a long period of time maintained branch offices for the purpose of soliciting passenger and freight business at Pensacola, Florida, Tampa, Florida; Gulfport, Mississippi, Memphis, Tennessee; New York City, New York; Chicago, Illinois; Atlanta, Georgia; St. Louis, Missouri; Houston, Texas, and in other cities.

3. All of the aforesaid constitute trade, traffic, commerce, transportation, and communication among the several states of the United States, and between foreign countries and the United States.

4. The respondent, by its officers, agents, and employees, while engaged at the Port of Mobile, State of Alabama, did terminate the employment of the below-named employees on the vessels indicated and on or about the dates indicated, and has at all times since refused to reinstate the said employees, hereinafter referred to as the above-named employees:

S. S. "BIENVILLE"

Fubert A. Bodden, Able Seaman, July 5, 1937; R. Bowen, Bosun, July 5, 1937; Eric Butcher, Wiper, July 5, 1937; Robert Crawford, Oiler, July 5, 1937; James Dobbs, Ordinary Seaman, July 5, 1937; W. Gold, Oiler, July 5, 1937; Herbert Hall, Fireman, July 5, 1937; Lewis Jones, Wiper, July 6, 1937; R. S. Kettlewell, Ordinary Seaman, July 5, 1937; Otto Ortleb, Fireman, July 5, 1937; E. X. Rhone, Steward, July 5, 1937; C. E. Smith, Oiler, July 5, 1937; J. C. Stewart, Fireman, July 5, 1937.

S. S. "FAIRLAND"

M. J. Burgess, Able Seaman, July 6, 1937; J. P. Hamilton, Ordinary Seaman, July 6, 1937; Wesley Howard, Ordinary Seaman, July 6, 1937; B. H. Ingram, Able Seaman, July 6, 1937; James M. Jeffries, Able Seaman, July 6, 1937; Archie McWiggen, Bosun, July 6, 1937; E. J. Pelletier, Steward, July 6, 1937; Jerry Turner, July 6, 1937; E. Wilkerson, Oiler, July 6, 1937; C. W. Wilson, Fireman, July 6, 1937.

5. The respondent terminated the employment of the above named employees and has refused to reinstate them for the reason that the above-named employees joined and assisted a labor organization known as the National Maritime Union of America, Engine Division, Mobile Branch, and engaged in concerted activities with other employees of the respondent for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, other conditions of employment, and other mutual aid and protection.

6. By its termination of the employment of the above-named employees and its refusal to reinstate the above-named employees, as above set forth, the respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in, and is thereby engaging in an unfair labor practice within the meaning of Section 8, subsection (1) of the Act.

7. By its termination of the employment of the above-named employees and its refusal to reinstate the above-named employees, as above set forth, the respondent did discriminate and is discriminating

in regard to the hire and tenure of employment of the above-named employees, and did discourage and is discouraging membership in the National Maritime Union of America, Engine Division, Mobile Branch, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subsection (3) of the Act.

8. The respondent, by its officers, agents, and employees while engaged at the port of Mobile, State of Alabama, did refuse to grant, and has at all times since failed to grant, to the duly authorized representatives of the N. M. U. passes permitting such representatives to board ships of the respondent for the purpose of soliciting membership for the N. M. U., while said ships were docked at the port of Mobile, State of Alabama.

9. By its refusal to grant said passes, as set forth above, the respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subsection (1) of the Act.

10. The aforesaid Acts of the respondent set forth in Paragraphs 1 to 9, inclusive, hereof constitute unfair labor practices affecting commerce within the meaning of Section 8, subdivision 1 and 3, and Section 2, subdivision 6 and 7 of said Act.

Wherefore, the National Labor Relations Board on the 9th day of October 1937, issues its Complaint against Waterman Steamship Corporation, respondent herein.

Notice of hearing

Please take notice that on the 1st day of November 1937, at the Federal Building, Grand Jury Room, Mobile, Alabama, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with the Rules and Regulations, Series 1, as amended, Article II, Section 22, on the allegations set forth in the Complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Fifteenth Region, 1106–08 Hibernia Bank Building, New Orleans, Louisiana, acting in this matter as the agent of the National Labor Relations Board, an answer to the above Complaint within five (5) days of service of said Complaint.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 1, as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of the said Rules and Regulations.

In witness whereof the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Fifteenth Region on the 9th day of October 1937.

CHARLES H. LOGAN,
Regional Director, Fifteenth Region,
National Labor Relations Board.

73 Before the National Labor Relations Board, Fifteenth Region

Case No. XV–C–75

[Title omitted.]

Amended complaint and notice of hearing

It having been charged by the National Maritime Union of America, hereinafter called the N. M. U., that the Waterman Steamship Corporation, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act, the National Labor Relations Board, by the Regional Director for the Fifteenth Region, as agent of the National Labor Relations Board designated by National Labor Relations Board Rules and Regulations, Series 1, Article IV, Section 1, hereby issues its Amended Complaint and alleges the following:

1. The respondent is and has been since June 10, 1919, a corporation organized under and existing by virtue of the laws of the State of Alabama, having its principal office and place of business in the City of Mobile, County of Mobile, State of Alabama, and is now and has continuously for a long period of time been engaged in the transportation of passengers and freight by steamship from and between the following ports: New York City, New York; Philadelphia, Pennsylvania; Baltimore, Maryland; Savannah, Georgia; Jacksonville, Tampa, and Panama City, Florida; Mobile, Alabama; New Orleans, Louisiana; New Bedford and Boston, Massachusetts; Porto Rica, Cuba; and Newfoundland; Liverpool, London, Manchester, West Hartlepool, Southampton, and Newcastle, England; Glasgow, Scotland; Bremen and Hamburg, Germany; Rotterdam, Holland;
74 Antwerp, Belgium; LeHavre, France; and at other ports, and has maintained piers, terminal, and other necessary facilities for loading and unloading freight at New York City, New York; Tampa, Jacksonville, and Panama City, Florida; New Orleans, Louisiana; Savannah, Georgia; Mobile, Alabama; Philadelphia, Pennsylvania; New Bedford and Boston, Massachusetts; the Republic of Cuba and at other ports, and has been operating tugs and lighters at points above-named for the purpose of handling its ships and carrying cargo, and has maintained squads of longshoremen for the purpose of loading and unloading its vessels at various points above named.

2. The respondent maintains, and has for a long period of time maintained branch offices for the purpose of soliciting passenger and freight business at Pensacola, Florida; Tampa, Florida; Gulfport, Mississippi; Memphis, Tennessee; New York City, New York; Chicago, Illinois; Atlanta, Georgia; St. Louis, Missouri; Houston, Texas, and in other cities.

3. All of the aforesaid constitute trade, traffic, commerce, transportation, and communication among the several states of the United States, and between foreign countries and the United States.

4. The respondent, by its officers, agents, and employees, while engaged at the Port of Boston, State of Massachusetts; the Port of Mobile, State of Alabama; and at other ports did terminate the employment of the below-named employees on the vessels indicated and on or about the dates indicated, and has at all times since refused to reinstate the said employees, hereinafter referred to as the above-named employees:

S. S. "BIENVILLE"

Basil Brown, Watertender, July 6, 1937; M. J. Burgess, Able Seaman, July 6, 1937; James Gilroy, Able Seaman, July 6, 1937; Kenneth E. Graham, Messman, July 6, 1937; J. P. Hamilton, Ordinary Seaman, July 6, 1937; Wesley Howard, Ordinary Seaman, July 6, 1937; B. H. Ingram; Able Seaman, July 6, 1937; Jame M. Jeffries, Able Seaman, July 6, 1937; Marlyn E. Jones, Wirer, July 6, 1937; A. C. King, Ordinary Seaman, July 6, 1937; Herman Lee, Oiler, July 6, 1937; Archie McWiggen, Bosun, July 6, 1937; J. B. Morrow, Waiter, July 6, 1937; Edmund J. Pelletier, Steward, July 6,
75 1937; W. Reynolds, Fireman, July 6, 1937; William Rodner, Watertender, July 6, 1937; R. F. Schuettner, Messboy, July 6, 1937; C. W. (Jerry) Turner, 4th Oiler, July 6, 1937; Earl Wilkerson, Oiler, July 6, 1937; C. W. Wilson, Fireman, July 6, 1937; Dudley Beuk, Fireman, July 6, 1937; Herman Zilberman, Able Seaman, July 6, 1937; R. Reynolds, Messman, July 6, 1937; F. Gordy, Oiler, July 6, 1937; — Lopez, Chief Cook, July 6, 1937.

S. S. "AZALEA CITY"

C. J. O'Connor, Second Asst. Engineer, August 16, 1937.

S. S. "PAN AMERICAN"

John R. Roberts, June 23, 1937; Joseph R. McCoy, June 23, 1937.

S. S. "FAIRLAND"

Columbus Anderson, Messboy, July 5, 1937; Andrew Benron, Messboy, July 5, 1937; Fulbert A. Bodden, Able Seaman, July 5, 1937; Howard Bowen, Bosun, July 5, 1937; Reese Bryars, Able Seaman, July 16, 1937; Eric Butcher, Wiper, July 5, 1937; Robert Craw-

ford, Oiler, July 5, 1937; James Dobbs, Ordinary Seaman, July 5, 1937; W. Gold, Oiler, July 5, 1937; Herbert Hall, Fireman, July 5, 1937; Lewis Jones, Wiper, July 6, 1937; Raymond S. Kettewell, Ordinary Seaman, July 5, 1937; Otto K. Ortleb, Fireman, July 5, 1937; Charles Perkins, July 5, 1937; Edward X Rhone, Steward, July 5, 1937; Jesse J. Scott, July 5, 1937; C. E. Smith, Oiler, July 5, 1937; James C. Steward, Fireman, July 5, 1937; Bennett Bapiste, Cook, July 5, 1937.

5. The respondent terminated the employment of the above-named employees and has refused to reinstate them for the reason that the above-named employees joined and assisted a labor organization known as the National Maritime Union of America, and engaged in concerted activities with other employees of the respondent for the purposes of collective bargaining in respect to rates of pay,
76 wages, hours of employment, other conditions of employment, and other mutual aid and protectio..

6. By its termination of the employment of the above-named employees and its refusal to reinstate the above-named employees, as above set forth, the respondent did interfere with, restrain, and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in, and is thereby engaging in an unfair labor practice within the meaning of Section 8, subsection (1) of the Act.

7. By its termination of the employment of the above-named employees and its refusal to reinstate the above-named employees, as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of the above-named employees, and did discourage and is discouraging membership in the National Maritime Union of America, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subsection (3) of the Act.

8. The respondent, by its officers, agents and employees while engaged at the port of Mobile, State of Alabama, and at other ports, did refuse to grant, and has at all times since failed to grant, to the duly authorized representatives of the N. M. U. passes permitting such representatives to board ships of the respondent for the purpose of soliciting membership for the N. M. U., while said ships were docked at the port of Mobile, State of Alabama, and at other ports.

9. By its refusal to grant said passes, as set forth above, the respondent did interfere with, restrain and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, subsection (1) of the Act.

10. The aforesaid acts of the respondent set forth in Paragraphs 1 to 9 inclusive hereof constitute unfair labor practices affecting com-

merce within the meaning of Section 8, subdivisions 1 and 3, and Section 2, subdivisions 6 and 7 of said Act.

Wherefore, the National Labor Relations Board on the 20th day of October 1937, issues its amended Complaint against Waterman Steamship Corporation, respondent herein.

77 NOTICE OF HEARING

Please take notice that on the 1st day of November 1937, at the Federal Building, Grand Jury Room, Mobile, Alabama, a hearing will be conducted before the National Labor Relations Board, by a Trial Examiner to be designated by it in accordance with the Rules and Regulations, Series 1, as amended, Article 11, Section 22, on the allegations set forth in the amended Complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Fifteenth Region, 1106–08 Hibernia Bank Building, New Orleans, Louisiana, acting in this matter as the agent of the National Labor Relations Board, an answer to the above amended Complaint within five (5) days of service of said amended Complaint.

Enclosed herewith for your information is a copy of the Rules and Regulations, Series 1, as amended, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article 11 of the said Rules and Regulations.

In witness whereof the National Labor Relations Board has caused this, its amended Complaint and Notice of Hearing, to be signed by the Regional Director for the Fifteenth Region on the 20th day of October 1937.

CHARLES H. LOGAN,
(Signed) C. H. Logan,
Regional Director, Fifteenth Region,
National Labor Relations Board.

78 Before the National Labor Relations Board, Fifteenth Region

[Title omitted.]

Amended charge

Filed October 7, 1937

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Waterman Steamship Corporation, Masonic Building, New Orleans, La., has engaged in and is engaging in unfair labor practices within the meaning of Section

8, subsections (,1) and (3) of said Act, in that, it by its officers, agents and employees, while engaged at the Port of Mobile, State of Alabama, did refuse to grant, and has at all times since failed to grant to the duly authorized representatives of the National Maritime Union passes permitting such representatives to board ships of the Respondent for the purpose of soliciting membership for the National Maritime Union, while said ships were docked at the Port of Mobile, State of Alabama.

It, by its officers, agents, and employees, did discharge the below-named employees on the dates indicated, because of their membership in and affiliation with the National Maritime Union, and has, at all times since, refused to reinstate them.

S. S. "BIENVILLE"

Basil Brown, Watertender, July 6, 1937; M. J. Burgess, Able Seaman, July 6, 1937; James Gilroy, Able Seaman, July 6, 1937; Kenneth E. Graham, Messman, July 6, 1937; J. P. Hamilton, Ordinary Seaman, July 6, 1937; Wesley Howard, Ordinary Seaman, July 6, 1937; B. H. Ingram, Able Seaman, July 6, 1937; James M. Jeffries, Able Seaman, July 6, 1937; Marlyn E. Jones, Wiper, July 6, 1937; A. C. King, Ordinary Seaman, July 6, 1937; Herman Lee, Oiler, July 6, 1937; Archie McWiggen, Bosun, July 6, 1937; J. B. Morrow, Waiter, July 6, 1937; Edmund J. Pelletier, Steward, July 6, 1937; W. Reynolds, Fireman, July 6, 1937; William Rodner, Watertender, July 6, 1937; R. F. Schuettner, Messboy, July 6, 1937; C. W. (Jerry) Turner, 4th Oiler, July 6, 1937; Earl Wilkerson, Oiler, July 6, 1937; C. W. Wilson, Fireman, July 6, 1937; Dudley Beuk, Fireman, July 6, 1937; Herman Zilberman, Able Seaman, July 6, 1937; R. Reynolds, Messman, July 6, 1937; F. Gordy, Oiler, July 6, 1937; — Lopez Chief Cook, July 6, 1937.

S. S. "AZALEA CITY"

C. J. O'Connor, Second Asst. Engineer, August 16, 1937.

S. S. "PAN AMERICAN"

John R. Roberts, June 23, 1937; Joseph R. McCoy, June 23, 1937.

79 S. S. "FAIRLAND"

Columbus Anderson, Messboy, July 5, 1937; Andrew Benron, Messboy, July 5, 1937; Fulbert A. Bodden, Able Seaman, July 5, 1937; Howard Bowen, Bosun, July 5, 1937; Reese Bryars, Able Seaman, July 16, 1937; Eric Butcher, Wiper, July 5, 1937; Robert Crawford, Oiler, July 5, 1937; James Dobbs, Ordinary Seaman, July 5, 1937; W. Gold, Oiler, July 5, 1937; Herbert Hall, Fireman, July 5, 1937; Lewis Jones, Wiper, July 6, 1937; Raymond S. Kettewell, Ordinary Seaman, July

5, 1937; Otto K. Ortleb, Fireman, July 5, 1937; Charles Perkins, July 5, 1937; Edward X. Rhone, Steward, July 5, 1937; Jesse J. Scott, July 5, 1937; C. E. Smith, Oiler, July 5, 1937; James C. Stewart, Fireman, July 5, 1937; Bennett Bapiste, Cook, July 5, 1937.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

NATIONAL MARITIME UNION,
By J. L. COOK,
Representative pro tem.

Subscribed and sworn to before me this 7th day of October 1937.

JACK W. DOLAN,
Notary Public.

80 Before the National Labor Relations Board, Fifteenth Region

Case No. XV–C–75

[Title omitted.]

Answer to amended complaint

Comes the Waterman Steamship Corporation, hereinafter called the respondent, and for answer to the complaint filed herein as finally amended respectfully shows unto the National Labor Relations Board as follows:

1. This respondent denies that it has engaged in, and is now engaging in, any unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act approved July 5th, 1935, hereinafter called the Act. This respondent admits that it is, and has been since June 10th, 1919, a corporation organized under and existing by virtue of the laws of the State of Alabama, having its principal office and place of business in the City of Mobile, County of Mobile, and State of Alabama, and is now and has continuously for a long period of time been engaged in the transportation of passengers and freight by steamship from and between the ports listed in Paragraph 1 of the complainant's complaint, except that this respondent does not engage in the transportation of passengers and freight by steamship between any of the American ports listed in said Paragraph 1, and it is only in recent months that this respondent has transported passengers and freight to Newfoundland. This respondent denies that it maintains piers, terminals, and other necessary facilities for loading and unloading freight at New York City, New York;

Tampa, Jacksonville, and Panama City, Florida; New Orleans,
81 Louisiana; Savannah, Georgia; Mobile, Alabama; Philadelphia,
Pennsylvania; New Bedford and Boston, Massachusetts; Republic of Cuba, and other ports, nor has it been engaged in operating tugs and lighters at the points above named for the purpose of handling ships and carrying cargo, nor has it maintained squads of longshoremen for the purpose of loading and unloading its vessels at the various points named in the complaint, although this respondent has employed tugboats and lighters, and has employed stevedores to load and unload vessels at some of the points mentioned.

2. This respondent admits that it has for a long period of time maintained branch offices for the purpose of soliciting passenger and freight business at Pensacola, Florida; Tampa, Florida; Gulfport, Mississippi; Memphis, Tennessee; New York City, New York; Chicago, Illinois; Atlanta, Georgia; St. Louis, Missouri; Houston, Texas; and in other cities.

3. This respondent admits that the aforesaid acts constitute trade, traffic, commerce, transportation, and communication between foreign countries and the United States.

4. In answer to the fourth paragraph of the complaint as finally amended, this respondent respectfully shows unto the National Labor Relations Board that the only occasion on which the employment of any of the employees on the vessels listed in paragraph 4 was terminated was when their contract of employment ended at the termination of the voyage for which they were employed, with the exception that insofar as C. J. O'Connor is concerned, that the said C. J. O'Connor voluntarily left the vessel of his own accord at the termination of the voyage, and insofar as John R. Roberts and Joseph R. McCoy are concerned, they were not employed by the Waterman Steamship Corporation, but this respondent is informed that they were employed by the Pan Atlantic Steamship Corporation, an entirely separate and distinct corporation, which operates its own vessels; that the other employees listed as being employed on the Steamship "Bienville" and on the Steamship "Fairland" were, in fact,
82 employed by this respondent; that these employees were in each instance employed to make a particular voyage and in the case of the Steamship "Bienville," when that vessel arrived in Mobile, all members of the crew were laid off as the "Bienville" laid up for repairs; that insofar as the crew of the "Fairland" is concerned, upon the arrival of the "Fairland" in Mobile she went on drydock and the members of the crew were discharged; that the contract of employment of the crews of both of said vessels terminated, as is usual and customary in such cases, when the said vessels were laid up for repairs or went on drydock; that this respondent has in no manner refused to reinstate the said employees except that in employing seamen for its vessels this respondent was obligated to comply with the terms of its contract with the International Seamen's Union of America, which contract will be hereinafter referred to.

5. This respondent denies that it terminated the employment of any of the employees named in the complaint as last amended and refused to reinstate them for the reason that the said employees joined and assisted a labor organization known as the National Maritime Union of America, and this respondent further denies that it terminated the employment of any of the employees named in the said complaint as last amended for the reason that they had engaged in concerted activities with other employees of the respondent for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, other conditions of employment, and other mutual aid and protection. On the other hand this respondent respectfully shows unto the National Labor Relations Board that under the contract in force at the times herein referred to between this respondent and the International Seamen's Union of America, it is expressly provided in Section 1 of Article II of the said contract as follows:

"SECTION 1. It is understood and agreed that, as vacancies occur, members of the International Seamen's Union of America,
83 who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the respective positions; provided, however, that this Section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt reshipment, or absence due to illness or accident."

This respondent further respectfully shows unto the National Labor Relations Board that any effort on its part to violate its solemn contract with the said International Seamen's Union of America would have been a breach of contract of a character which this respondent is not willing to be guilty of and which would subject this respondent to suit at the instance of the International Seamen's Union of America; that this respondent further respectfully shows unto the National Labor Relations Board that under the express provisions of the National Labor Relations Act it is specifically provided in subdivision 3 of Section 8 thereof that nothing in the said Act, or in the National Industrial Recovery Act, as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in Section 9 (a) in the appropriate collective bargaining unit covered by such agreement when made, and this respondent respectfully shows unto the said National Labor Relations Board that the labor organization known as the International Seamen's Union of America was, when such agreement was made, and at all times herein referred to, the representative of the employees as provided in Section 9 (a) of the said Act.

6. This respondent denies that by its termination of the employment of the employees hereinabove referred to in the manner hereinabove set forth, that this respondent interfered with, restrained and coerced, or is interfering with, restraining or coercing, its em-
84 ployees in the exercise of the rights guaranteed in Section 7 of the said Act, and this respondent denies that it did thereby engage in, and is thereby engaging in, an unfair labor practice within the meaning of Section 8, subsection (1) of the said Act, but this respondent, on the contrary, respectfully shows unto the National Labor Relations Board that had it refused to take the course which it has taken in the premises, and had it refused to abide by its contract with the International Seamen's Union of America in giving preference of employment to members of the International Seamen's Union of America, that it would have not only violated its contract with the said International Seamen's Union of America, but would have been liable in damages to the said organization. This respondent respectfully shows to the National Labor Relations Board that none of the employees referred to in the complaint were refused employment by this respondent on account of their affiliation with the National Maritime Union of America, but after their prior employment had been terminated and it then became the problem of this respondent to obtain new crews when the vessels in question were ready to sail, this respondent was obligated under the provisions of its contract hereinabove referred to, to give preference of employment to members of the International Seamen's Union of America, and the only reason that the employees listed in the amended complaint, or some of them, were not employed by this respondent when it obtained a new crew for its vessel was due to the fact that they were not members of the International Seamen's Union of America, from which organization this respondent, under its said contract, was required to obtain its employees except that in the case of Edmund J. Pelletier his services were dispensed with because they were unsatisfactory.

7. In answer to the seventh paragraph of the complaint as last amended, this respondent respectfully shows unto the National Labor Relations Board that it has not refused to reinstate any particular employees, but has only complied with its written contract
85 with the International Seamen's Union of America under the terms of which this respondent is required to give preference of employment to members of that organization, and this respondent emphatically denies that it discriminated, or that it is discriminating, against the employees referred to in the amended bill of complaint in regard to the hire and tenure of employment of the said employees except that such employees could not, under the terms of the contract between this respondent and the International Seamen's Union of America, be re-employed unless they were members of the said International Seamen's Union of America, and thereby become entitled to preference of employment. This respondent denies that it has discouraged, and is discouraging, membership in the

National Maritime Union of America, and denies that it did thereby engage in, and is thereby engaging in, an unfair labor practice within the meaning of Section 8, subsection (3) of the said Act, and on the contrary this respondent respectfully shows to the National Labor Relations Board that so far as it is concerned, it is entirely immaterial who becomes members of the National Maritime Union of America and who becomes members of the International Seamen's Union of America, so long as this respondent can obtain capable, honest, industrious, faithful, and loyal employees without violating its contract with the International Seamen's Union of America. This respondent has at all times required, and will in the future require, such service from all of its employees and under its contract as hereinabove set forth it is required to give preference of employment to members of the International Seamen's Union of America, but this respondent has in no manner whatsoever discouraged, or attempted to discourage, membership of its employees in any maritime union or any other organization, nor has this respondent been engaged in any manner in unfair labor practices within the meaning of said act.

8. This respondent admits that it has, by its officers, agents, and employees, while engaged at the port of Mobile, State of
86 Alabama, and at other ports, refused to grant, and has at all times since failed and refused to grant, the duly authorized representatives of the N. M. U. passes permitting such representatives to board ships of respondent for the purpose of soliciting membership for the N. M. U., or for any other purpose, while said ships were docked at the Port of Mobile, State of Alabama, and at other ports, and this respondent demands and will insist upon its right to determine who shall and who shall not enter upon its privately owned property so long as no laws are violated, and this respondent further respectfully shows unto the National Labor Relations Board that it knows of no law which requires this respondent to permit or tolerate the entrance upon its property of any person or persons, regardless of what organizations, societies or associations they may belong to, except when their presence upon the property of this respondent is consented to by this respondent. This respondent further respectfully shows unto the National Labor Relations Board that it has voluntarily entered into a contract with the International Seamen's Union of America, being the contract hereinabove referred to, under the terms of which contract, under certain conditions, this respondent permits authorized representatives of the International Seamen's Union of America to go on board the ships of respondent, but such entrance upon the ships of respondent is subject to regulations prescribed by the respondent and under no circumstances does this respondent permit such representatives of the International Seamen's Union of America to interfere with its employees while at work. This respondent further respectfully shows unto the National Labor Relations Board that under its con-

act with the International Seamen's Union of America, which nder certain conditions permits authorized representatives of the aid International Seamen's Union of America to go on board re- pondent's ships, that it is expressly provided that the said Inter- national Seamen's Union of America shall take out insurance 7 which will, protect this respondent against any claim, loss, damage, or liability for loss of life or injury occurring to a epresentative of the said International Seamen's Union of America hile on the property or while on board a vessel of this respondent, nd this respondent would not permit any representative of the nternational Seamen's Union of America to enter on board its ships ithout first obtaining such insurance. This respondent further hows unto the National Labor Relations Board that the parties ought to be protected by the provisions of Section 8 of the National abor Relations Act are the employees of the respondent and not epresentatives of some Union seeking to get respondent's employees o join their Union in preference to some other Union, and this re- pondent further respectfully shows unto the National Labor Re- ations Board that by refusing to permit representatives of the . M. U. to have passes permitting such representatives to go on oard the ships of respondent, this respondent is not in any manner nterfering with, restraining or coercing employees in the exercise f the rights guaranteed to them under the provisions of Section 7 f said National Labor Relations Act.

9. This respondent denies that by its refusal to grant the passes eferred to in paragraph 8 of the complaint as last amended that this espondent did interfere with, restrain, and coerce, or is interfering ith, restraining, and coercing, its employees in the exercise of the ghts guaranteed under Section 7 of the said National Labor Relations ct, and this respondent denies that by refusing to grant such passes thereby engaged in and is thereby engaging in an unfair labor ractice within the meaning of Section 8, subsection (1) of the said ct.

10. This respondent denies that the acts set forth in paragraphs 1 to 9, inclusive, of the complaint as last amended, constitute 8 unfair labor practices affecting commerce within the meaning of Section 8, subdivisions 1 and 3, and Section 2, subdivisions and 7 of the said Act.

This respondent further respectfully shows unto the National Labor elations Board that as a matter of fact a substantial number of the amen who are listed in the complaint as last amended as having en deprived of employment are, in fact, now employed by this re- pondent and are working as members of the crews on some of its ssels, or in its warehouses, and respondent is informed and believes, nd upon such information and belief alleges the fact to be, that a bstantial number of the seamen listed in the said complaint as last mended have given up their membership in the N. M. U. and are ow members of the International Seamen's Union of America. This

respondent repeats that it is entirely immaterial to it as to what organization or union members of its crews belong to, as the only purpose of this respondent in selecting its employees is to faithfully carry out the contract which it has with the International Seamen's Union of America, which organization under the terms of the said contract supplies this respondent with the number and character of seamen desired.

This respondent does further expressly deny all of the allegations of the complaint as last amended, which has been filed against it in this proceeding, except such allegations thereof as are hereby expressly admitted.

Wherefore, the premises considered, this respondent prays that the complaint as last amended, filed in this proceeding, be forthwith dismissed.

Respectfully submitted.

[SEAL] WATERMAN STEAMSHIP CORPORATION.

By (Signed) N. NICOLSON,

Executive Vice President,
Respondent.

STEVENS, MCCORVEY, MCLEOD, GOODE & TURNER,

By (Signed) Gessner T. McCorvey, GESSNER T. MCCORVEY,

Attorneys for Respondent.

89 [*Duly sworn to by N. Nicolson; jurat omitted in printing.*]

WATERMAN STEAMSHIP CORPORATION—CERTIFICATE OF THE SECRETARY

I, H. C. Slaton, hereby certify that I am the duly elected and acting Secretary of Waterman Steamship Corporation, an Alabama corporation, having its principal office in Mobile, Alabama; that as Secretary, I have charge of the minute books and records of said corporation and the Board of Directors of said corporation, at a meeting held October 19th, 1937, duly called and held at the offices of said corporation at Mobile, Alabama, elected Captain N. G. Nicolson Executive Vice-President of the corporation.

I further certify that at the present time, Captain N. G. Nicolson is serving in the capacity of Executive Vice-President of Waterman Steamship Corporation.

In witness whereof, I have hereunto set my hand and the seal of said Waterman Steamship Corporation this 25th day of October 1937.

(Signed) H. C. SLATON.

Secretary of Waterman Steamship Corporation.

STATE OF ALABAMA,

County of Mobile.

H. C. Slaton, being duly sworn, deposes and says that he is the Secretary of Waterman Steamship Corporation; that he signed the foregoing certificate and affixed thereto the corporate seal of said

corporation, pursuant to instructions of the Board of Directors of said corporation; that the facts stated in said certificate are true.

(Signed) H. C. SLATON.

Subscribed and sworn to before me this 25th day of October 1937.

[SEAL] (Signed). MARY PAPE,
Notary Public,
State of Alabama, County of Mobile.

My Commission expires January 17th, 1939.

90 Before the National Labor Relations Board, Fifteenth Region

Case No. XV–C–75

Amendment to answer to amended complaint

Filed November 2, 1937

Comes the Waterman Steamship Corporation, and amends the answer heretofore filed by it to the amended complaint in this proceeding in the following particulars:

(a) By adding just following the words "while at work" where the same appear in the eighth line from the bottom of Page 7 of the answer to the amended complaint and just before the words "This respondent further" where the said words appear in the seventh line from the bottom of Page 7 of the answer to the amended complaint the following:

"This respondent further respectfully shows unto the National Labor Relations Board that under date of July 13th, 1937, this respondent addressed and delivered to the masters of all of its vessels the following order and regulations:

"TO ALL MASTERS:

'In view of the fact that the National Labor Relations Board are now holding elections to determine whether the N. M. U. or the I. S. U. should represent the unlicensed members of our crews in collective bargaining, we have decided that we will not allow any delegates from either union to board our vessels for the purpose of soliciting memberships.

"(Signed) N. Nicolson,
"N. NICOLSON,
NN/L. "*Executive Vice-President.*"

"This respondent further shows unto the National Labor Relations Board that on July 12th, 1937, it addressed and delivered to William Ross, Agent for the International Seamen's Union, at Mobile, Ala-

bama, a letter containing certain regulations, which letter reads as follows:

'Mr. Wm. Ross, *Agent*,
International Seamen's Union, Mobile, Alabama.

91 'Dear Sir: In view of the fact that the National Labor Relations Board is now holding an election to determine whether the N. M. U. or the I. S. U. should represent the unlicensed personnel of our vessels at collective bargaining, we have decided that until that election is held we will not allow members from the N. M. U. or your organization on board our vessels for the purpose of soliciting membership.

'Kindly acknowledge receipt.

'Yours very truly,

'Waterman Steamship Corporation.
'N. Nicolson,
'*Executive Vice-President.*'

NN/L.

"This respondent further shows unto the National Labor Relations Board that the only purpose for which the representatives of the International Seamen's Union of America were allowed to go on board the ships of this respondent was for the purpose of collecting dues, and this respondent further respectfully shows unto the National Labor Relations Board that upon receipt of respondent's letter of July 12th, 1937, William Ross, Agent, addressed to Capt. Nicolson a letter reading in words and figures as follows:

'International Seamen's Union of America,
'Affiliated With the A. F. of L.,
'Mobile Branch, 55 South Conception Street,
'*July 14th, 1937.*

'Captain N. Nicolson,
'*Executive Vice-President,*
'*Waterman Steamship Corporation,*
'*Merchants National Bank Building, Mobile, Alabama.*

'Dear Sir: This will acknowledge the receipt of your letter dated July 12th, 1937.

'In reply I would state that passes issued to the Agents and Delegates of the International Seamen's Union of America have not been used for the purpose of soliciting memberships. Our Agents and Delegates board ships only in line with their duties to contact members of the International Seamen's Union of America, collect dues, and attend to matters relative to the work and agreements existing.

'The Election to be held under the National Labor Relations Board supervision does not in any way affect the agreements in force

between the Steamship Companies and the International Seamen's Union of America.

'Yours Respectfully,

'(Signed) WILLIAM ROSS, *Agent.*

'WATERMAN STEAMSHIP CORPORATION,

'By ——— ———,

'*Executive Vice-President,*

'*Respondent.*

'STEVENS, MCCORVEY, MCLEOD, GOODE & TURNER,

By ——— ———, *Attorneys for Respondent.*

'Subscribed and sworn to before me this — day of November 1937.

'——— ———,

'*Notary Public, Mobile County, Alabama.*'"

92 **Before the National Labor Relations Board**

[Title omitted.]

Petition for leave to intervene

Comes the Seamen's Reorganization Committee of the American Federation of Labor and asks your Honorable Board to permit it to intervene in the above-entitled matter and to allege and show to your Board its side of the matter involved, its connection therewith, in order that full justice may be done to all parties concerned:

And if so permitted to intervene herein, your Intervenor alleges that several years before the attempted organization of the said National Maritime Union, insofar as the Port of Mobile is concerned, the International Seamen's Union of America was a duly organized and constituted labor union, duly affiliated with the American Federation of Labor, that Intervenor was a self-organized and governing body, and it produces herewith its constitution and laws showing that it was so organized and its officers so elected and the control of the organization was such that it met all of the requirements of the Wagner Act, that a such labor union it was fully qualified and capable of looking after the interests of its members insofar as negotiating contracts with shipowners was concerned, that it did actively and consistently look after and protects the interests of the employees who are members thereof in all matters of working conditions, wages and disputes, and working hours.

Intervenor further alleges that prior to the attempted organization of the said National Maritime Union the International Seamen's Union of America had negotiated a fair and binding contract between the seamen members thereof and the American Steamship Owners' Association, and that the same continues in full force and effect, that after the organization of the said National Maritime Union it sought in every way to interfere with the International Seamen's Union of America, in fact to destroy said union by all

sorts of misrepresentations and unfair methods, that it even attempted to operate under the respective names of the different
93 branches of our union, to forge the names of its officers, to mislead its members into paying dues to said pretended officers of the National Maritime Union and even went to the length of attempting to pull a strike and prevent the members of this union from carrying out its contract with the Waterman Steamship Corporation, one of the members of said American Steamship Owners' Association.

That the undersigned are authorized to represent the Seamen's Reorganization Committee, which is the successor of the said International Seamen's Union in the contract now in force.

That for Your Honorable Body by its order to hold that the Agents and Officers of said National Maritime Union should be allowed passes to go on the ships of said Line with which Your Intervenor holds this contract would be to aid and abet said National Maritime Union in doing one of the acts forbidden by the Wagner Act, namely, to prevent the carrying out of a contract made in good faith with that organization duly constituted and empowered to represent the men benefited by said contract.

Wherefore, Your Intervenor prays that they may be allowed to intervent in this proceeding and be heard.

SEAMEN'S REORGANIZATION COMMITTEE,
AMERICAN FEDERATION OF LABOR,
By (S) WILLIAM R. ROSS, *Business Agent.*

Subscribed and sworn to before me this 2nd day of November 1937.

(S) VIRGIL C. GRIFFIN,
Clerk, United States District Court.

(S) ALEX V. HOWARD,
Attorney for Intervenor.

94 **Before National Labor Relations Board**

Case No. XV-C-75

[Title omitted.]

Order designating trial examiner

A charge having been filed in this matter, and it having appeared to the Regional Director of the Fifteenth Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It is hereby ordered that William Seagle act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1, as amended, of the National Labor Relations Board.

Dated, Washington, D. C., October 28, 1937.

By direction of the Board:

[SEAL] (Sd) Benedict Wolf.
BENEDICT WOLF, *Secretary.*

95 **Before the National Labor Relations Board,**
Fifteenth Region

Case No. XV–C–75

[Title omitted.]

Amendment to answer to amended complaint

Comes the Waterman Steamship Corporation and amends the answer heretofore filed by it to the amended complaint in this proceeding in the following particulars:

1. By changing the word "National" to "International" where the said word appears in the fourth line from the bottom of paragraph 5, on page 4 of the said answer.

2. By changing the word "perference" to "preference" where the said word appears in the 6th paragraph of the said answer in the ninth line from the top of page 5.

WATERMAN STEAMSHIP CORPORATION,
By (Signed) N. NICOLSON, *Executive Vice-President*,
Respondent.
STEVENS, MCCORVEY, MCLEOD, GOODE & TURNER,
By (Signed) GESSNER T. MCCORVEY,
Attorneys for Respondent.

96 **Before the National Labor Relations Board, Fifteenth Region**

Case No. XV–C–75

[Title omitted.]

Intermediate report

Upon charge duly made, and acting pursuant to authority granted in Section 10 (b) of the National Labor Relations Act, 49 Stat. 449, Charles H. Logan, agent of the National Labor Relations Board, acting pursuant to its Rules and Regulations—Series 1, as amended, Article IV, Section 1, issued its complaint dated October 9, 1937, against Waterman Steamship Corporation, the respondent herein. The complaint and notice of hearing thereon were duly served upon respondent on October 9, 1937, in accordance with said Rules and Regulations—Series 1, as amended, Article V, Section 1. Thereafter, and before such hearing was held, the said agent of the Board, acting pursuant to the said Rules and Regulations, issued an amended complaint, dated October 20, 1937. The amended complaint and notice of hearing thereon were duly served upon respondent in accordance with the said Rules and Regulations on October 20, 1937.

The complaint (as amended) alleges:

The respondent is and has been since June 10, 1919, a corporation organized under and existing by virtue of the laws of the State of Alabama, having its principal office and place of business in the City of Mobile, County of Mobile, State of Alabama, and is now and has continuously for a long period of time been engaged in
97 the transportation of passengers and freight by steamship from and between various ports in the United States and foreign countries, maintaining and operating in this connection at various points, piers, terminals, and other facilities, tugs, and lighters, employing squads of longshoremen, and soliciting passenger and freight business through various branch offices, all of the aforesaid constituting trade, traffic, commerce, transportation, and communication among the several states of the United States, and between foreign countries and the United States.

The said complaint goes on to allege that, while being so engaged, the respondent, through its officers, agents, and employees, did on certain dates terminate the employment of various members of the crews of the vessels S. S. "Bienville," S. S. "Azalea City," S. S. "Pan American," and S. S. "Fairland," for the reason that the said employees joined and assisted a labor organization known as the National Maritime Union of America, and that while engaged in its business in the Port of Mobile, State of Alabama, and at other ports, the respondent did refuse to issue passes to duly accredited representatives of the National Maritime Union to board its ships for the purpose of soliciting members while its ships were docked in said ports.

The complaint concludes by charging the respondent with having committed, by virtue of its acts, unfair labor practices within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7) of the National Labor Relations Act.

The respondent thereafter filed its answer to the amended complaint. The answer admits the facts alleged in the said complaint relating to the respondent's corporate history and the nature of its business, except that the answer denies that its ships are engaged in coastwise trade, carrying passengers or freight between ports of the United States. The answer, however, expressly admits that the activities of the respondent constitute trade, traffic, commerce, transportation, and communication between foreign countries and the United States.

98 As far as the discriminatory discharges are concerned the respondent's answer alleges that C. J. O'Connor, of the S. S. "Azalea City," was not discharged at all but left the vessel of his own accord at the termination of the voyage, and that John R. Roberts and Joseph R. McCoy were not employees of the respondent but of the Pan Atlantic Steamship Corporation, an entirely separate and distinct corporation. As to the remaining discharges, which involve the members of the crews of the S. S. "Bienville" and S. S. "Fairland," the respondent's answer alleges that these employees were

in each instance employed to make a particular voyage and were discharged at the termination thereof when the vessels were laid up for repairs or went on dry dock, as is usual and customary in such cases; and that thereafter the respondent did not refuse to reinstate such employees, except that under the terms of a valid contract with the International Seamen's Union of America, which provided that it give preference of employment to members of the said labor organization, it was bound to refuse to employ any persons who were not members of such organization.

As to the refusal to issue passes to representatives of the National Maritime Union, the respondent's answer admits that it has refused at the Port of Mobile, as well as at other ports, to issue such passes to such representatives for any purpose, but pleads the right to determine for itself who shall be permitted to enter upon its property. The answer of the respondent further admits with reference to this issue that in pursuance of provisions in its contract with the International Seamen's Union, already mentioned, it does issue passes to representatives of this labor organization under certain conditions, which are that they do not interfere with their employees while at work, and take out insurance to indemnify the respondent against any claim for liability for loss of life or injury occurring to such representatives. Finally, the answer pleads in the same connection that "the parties sought to be protected by the provisions of
99 Section 8 of the National Labor Relations Act are the employees of the respondent and not representatives of some union seeking to get respondent's employees to join their Union in preference to some other Union."

The respondent's answer concludes by denying that it has engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7) of the National Labor Relations Act, and points out that as a matter of fact a substantial number of the seamen listed in the complaint are now employed upon the respondent's vessels or in its warehouses, having renounced their membereship in the National Maritime Union and become members of the International Seamen's Union of America.

Pursuant to the notice of hearing, the undersigned, as Trial Examiner of the National Labor Relations Board designated to conduct hearings in this case, conducted a hearing on November 2, 3, 4, and 5, 1937, at Mobile, Alabama. The respondent appeared by Gessner T. McCorvey and C. A. L. Johnstone, Jr., of the firm of Stevens, McCorvey, McLeod, Goode & Turner. The National Maritime Union of America appeared by Max Lustig, of the office of William L. Standard. The Board was represented by Joseph A. Hoskins and Berdon M. Bell, two of its attorneys. Full opportunity to be heard, to cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to the parties. The parties were granted a reasonable period for oral argument at the close of the hearing and were afforded an opportunity to file briefs.

At the opening of the proceedings Alex V. Howard, attorney for the Seamen's Reorganization Committee of the American Federation of Labor, successor to the International Seamen's Union of America, moved to intervene. The motion was granted, subject to the condition that the intervention be limited to the defence of the validity of the contract between the respondent and the International Seamen's Union.

In the course of the proceedings various motions were made
100 and allowed: (1) A motion of the respondent to amend its answer to plead that on July 12, 1937, it informed the International Seamen's Union that thereafter its representatives would be permitted on board its vessels only for the purpose of collecting dues from its members. (2) A motion of the respondent to amend its answer to allege that Edmund J. Pelletier, a member of the crew of the S. S. "Bienville," was discharged for cause, i. e., for the reason that his services were unsatisfactory. (3) A motion by counsel for the Board to amend the complaint to allege that C. J. O'Connor, a member of the crew of the S. S. "Azalea City," was discriminated against because he joined and assisted the Marine Engineers' Beneficial Association, rather than the National Maritime Union. In the course of the proceeding counsel for the Board also moved to dismiss the complaint in so far as it alleged the discriminatory discharges of John R. Roberts, Joseph R. McCoy, and Reese Bryars. The motions were granted.

After the taking of testimony had been concluded, counsel for the respondent moved to dismiss the complaint on six grounds which may be summarized by saying that they amounted to a contention that the respondent had not been guilty of any of the unfair labor practices charged in the complaint. This motion was denied. Thereupon counsel for the intervener moved to dismiss the complaint on the ground that any action on the part of the Board would impair the obligation of the contract between the respondent and the International Seaman's Union of America. This motion was also denied.

Upon the close of the case counsel for the Board moved that the pleadings be made to conform to the proof, and the motion was granted without objection, to inure to the benefit of all parties.

Upon the record as thus made, the stenographic report of the hearing, and all the evidence, including oral testimony, documentary and other evidence received at the hearing, the undersigned makes, in addition to the above, the following specific findings of fact:

101 *Findings of fact*

I. THE RESPONDENT AND ITS BUSINESS

The respondent is and at all times since June 10, 1919, has been a corporation organized under and existing by virtue of the laws of the State of Alabama, and having its principal office and place of business

in the City of Mobile, County of Mobile, State of Alabama. The respondent is engaged in the transportation for hire of passengers and freight by steamship. In the course of the operation of its vessels it employs at any one time approximately 700 persons as members of their crews. In all, some 90 seamen are dependent upon the Waterman Steamship Corporation for their livelihood.

II. THE UNIONS

The National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama, hereinafter referred to as the N. M. U., is a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act. It is now affiliated with the Committee for Industrial Organization. The Seamen's Reorganization Committee of the American Federation of Labor, hereinafter referred to as the S. R. C., as well as the International Seamen's Union of America, hereinafter referred to as the I. S. U., are labor organizations within the meaning of Section 2 (5) of the National Labor Relations Act. The I. S. U. was succeeded by the S. R. C. on September 20, 1937. All of the labor organizations mentioned admit to membership the unlicensed personnel of the respondent's vessels. The Marine Engineers' Beneficial Association, hereinafter referred to as the M. E. B. A., is a labor organization within the meaning of Section 2 (5) of the National Labor Relations Act, admitting to membership the licensed personnel of the respondent's vessels.

102 III. THE UNFAIR LABOR PRACTICES

(a) The discriminatory discharges

The S. S. "Bienville" sailed on May 5, 1937, from the port of Mobile, Alabama, bound for La Havre, France, and other European ports. The S. S. "Fairland" sailed from the same port on June 11, 1937, bound for New Orleans, Louisiana, and Puerto Rico. When the ships sailed the members of their crews were all members of the I. S. U. However, during their voyages the sentiment of the crews veered towards the N. M. U. It so happened that both ships came into the port of Tampa, Florida, within a few hours of each other. The "Bienville" came in first, on July 1, 1937, and some members of the crew, meeting James F. Bennett, an organizer for the N. M. U., invited him aboard, where that morning he signed up every member of the "Bienville" crew for the N. M. U. Robert Epps, an agent of the I. S. U., came on board while the signing was going on and threatened to run Bennett off the ship but the crew intervened and prevented him from making good his threat. Bennett went back to the "Bienville" in the afternoon and the crew told him the "Fairland" had come in. So he went down to the dock and tried to get on board the ship. The mate, however, stopped him. When the crew got wind of this, they threatened to strike unless Bennett was allowed on board.

When the captain capitulated, Bennett went on board and signed
all but three members of the "Fairland" crew. On both ships B
nett was accompanied by an N. M. U. delegate, named Charles Bo

The "Fairland" arrived first at Mobile, docking early in the mo
ing of July 5. The "Bienville" docked shortly before midnight of
same day. The crew of the "Fairland" signed off the articles on J
5, while the crew of the "Bienville" did the same on July
103 Orders were given to kill the steam on both vessels, and
crews on both vessels were laid off to the last man, with
exception, of course, of the officers. Three members of the "Fairla
crew who did not join the N. M. U. apparently quit of their o
accord, but that would not really affect the sweeping character of
lay-off. The "Fairland" was put into drydock and underwent c
siderable repairs, while the "Bienville" was put up for extens
structural alterations in the passenger and crew quarters, as well as
other respects. Employment was thereafter refused on these as w
as on any other ships of the Waterman line to such members of
crews who had joined and remained members of the N. M. U. T
contention of the respondent is twofold: first, that the lay-offs of
crew of the "Fairland" on July 5, and of the crew of the "Bienvil
on July 6 were nondiscriminatory, having no connection with t
shift of the crews' union allegiance in Tampa, the employment of
crews having automatically terminated at the conclusion of th
respective voyages, and, second, that the refusal to reemploy a
member of these crews when the ships sailed again was excused
virtue of the provisions of its agreement with the I. S. U. of March
1937, which was a valid and binding contract.

While the question of the term of the crews' employment does
in itself depend on the provisions of the contract of March 9, 19
these do throw considerable light on the problem and will be descri
first. However, before proceeding to do so, a preliminary quest
must be disposed of: Was the contract valid and binding when mad
There is no contention that any unfair labor practices were involv
in its inception. But counsel for the Board did attempt to show th
there was no proof that a majority of the unlicensed personnel of
respondent were members of the I. S. U. at the time the contract w
made. Captain Nicolson, the executive vice president of the respo
ent, admitted that he had not demanded any proof of the extent
the I. S. U. membership at the time the contract was made, a
104 the intervener produced no membership cards at the heari

However, proof need not necessarily be documentary, and t
circumstances of the case make it highly unreasonable to suppose th
the overwhelming majority of the respondent's employees belonged
any other labor organization than the I. S. U. in March 1937. T
contract of March 9, 1937, embodies the principle of the preferent
shop, but it was not the first such contract between the respondent a
the I. S. U. It had been preceded by a contract made between t
same parties in the early part of 1935, which also embodied the pr
ciple of the preferential shop. After the operation of such a contr

for over a year, an overwhelming majority of the crews of the respondent's vessels would certainly belong to the I. S. U. It is true that the evidence shows that a considerable percentage of the respondent's crews have been steadily employed by it for a good number of years, and under the terms of the contract they would not be required to join the I. S. U. to hold their jobs, at least as long as they kept reshipping on the same vessels, so that it is possible that there might be a large proportion of its personnel who were nonmembers. But experience proves that a preferential shop agreement rapidly impels most employees to join the union which has secured it, and there is no evidence to show that the agreement of 1935 did not operate in the same way. Indeed, the evidence with respect to at least two of the ships involved in the present proceeding, namely, the "Bienville" and the "Fairland," shows that their crews belonged 100 percent to the I. S. U. in the middle of 1937.

The contract of March 9, 1937, was thus valid in its inception. It was made as a group contract which was signed by many other shipping companies in addition to the respondent. Article II, Section 1 is the clause of the contract which is not relevant to the issues in this proceeding, and it provides: "It is understood and agreed that, as vacancies occur, members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the
105 respective positions; provided, however, that this section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt reshipment, or absence due to illness or accident."

This provision of the contract in itself shall be sufficient to dispose of the respondent's contention that the crews were automatically discharged at the termination of the voyages of the "Bienville" and the "Fairland." It not only uses the term "employee" but shows how important it was to the respondent to assure itself of the benefits of continuous employment of experienced crews. It was considered so important that it was expressly provided that seamen already employed might continue in their employment although they did not desire to join the preferred union. Article I, Section 1 (b) of the contract also speaks, in connection with settling disputes, of issues that might arise between "individual Shipping Companies and *their employees*." The respondent contends that the whole contract between itself and the members of its crews is embodied in the articles under which the crews ship, and that, shipping always for a particular voyage, they are completely discharged at the end of the voyage. Not only is this position inconsistent with the mere existence of the contract of March 9, 1937, which is based upon the assumption of continuity of employment, but it is based upon an unjustified interpretation of the shipping articles themselves. Shipping articles are required by federal statute in order to protect the seamen against overreaching, but they do not exhaust the whole relationship between a shipper and a crew. A shipping company may have in addition

rules and regulations which exist quite independently of the articles and may govern the terms and conditions of a seamen's employment not only in port but at sea, and evidence of the existence of such rules and regulations is available in the present case. The crew on a vessel is required, for instance to stand watch while the vessel is in port, although the members of the crew have signed off the
106 articles. Thus, Captain Reed, the respondent's port captain, testified that even after the crew signs off the men stand their watches unless they are leaving the ship (R. 746). The crew in signing off the articles merely releases the shipper from any claim for wages, as is expressly shown by the language of the releases contained in the shipping articles of the "Bienville" and the "Fairland," which provide in identical terms: "We, the undersigned seamen do hereby; each one for himself, by our signatures herewith given in consideration of settlements made before the shipping commissioner, release the Master and owners from all claims for wages in respect of this voyage and engagement, and I, the Master, do also release each of the undersigned seamen from all claims, in consideration of this release signed by them."

As a matter of fact, the signing of articles is not required by the United States shipping laws when vessels sail from an American port to the West Indies, to which many Waterman ships sail. Thus, although articles were signed for the "Fairland," which was bound for Puerto Rico, they were not really necessary and might have been dispensed with. There is testimony which indicates that where the terms of articles have not expired, crews are sometimes reshipped without the signing of new articles, and that this may be done not only in coastal but in foreign trade (R. 49). The articles of both the "Bienville" and the "Fairland" are for a term of 12 months, and it is highly significant that in the case of the "Fairland" the articles themselves expressly provide that the vessel might ply between Mobile, Alabama, and Puerto Rico "and such other ports and places *including the same* in any part of the world as the Master may direct * * *." [Italics mine.] Thus the "Fairland" might have made any number of voyages between the same ports which could be completed within a 12-month period.

It is true that, once the crew signs off the articles, they are at liberty to quit the ship. But the situation here is no different than that which exists in any industrial plant on land where men are
107 employed by the hour, or even at a piece-work basis. The fact that they may quit at any time does not make their service any the less continuous, or entitle the employer to lay them off under circumstances which would constitute discrimination under the Act. The contention of the respondent that the crews were hired only for a particular voyage is really tantamount to an assertion that the protection of the Act could not possibly extend to seamen, for if it was not necessary to lay the crew off, to terminate its service, it would make no difference whether the crew was laid off because the ships were put up for repair or for any other reason.

It is next in order to consider whether there is proof that the crews of the "Bienville" and "Fairland" were discriminated against when they were laid off, upon the drydocking or repair of the ships, and subsequently were refused reinstatement when the ships sailed again. This question may be considered upon two assumptions: (1) That the dry docking or repair of the ships was arranged at the time solely for the purpose of making it possible to lay off the crews because they had joined the N. M. U. before they came into port; (2) that the dry docking or repairs for the periods during which the ships were out of commission occurred in the normal course of the operation of the ships but that advantage was nevertheless taken of the situation to get rid of the crews, so that it would be unnecessary to ship them again. If either assumption is accepted there was discrimination with respect to the hire and tenure of employment of the crew. It is also necessary to consider whether, even if the lay-offs were entirely legitimate, the respondent did not commit an illegal act by refusing to reship the crew when the vessels sailed again because they were no longer members of the I. S. U.

The second assumption, which is somewhat more favorable to the respondent, will be discussed first. The fact that the crews of both vessels were laid off without exception is in itself sufficient
108 to establish that the officers of the respondent were determined to employ them no longer, or at least not until they renounced their membership in the N. M. U. The respondent contended that there was no custom in shipping circles which required it to continue to employ the same crew as long as it was willing to sail the ship. But this contention largely misses the point. There may or may not have been a custom which was general and obligating in the legal sense of the term. But there can hardly be any doubt that the practice of the maritime industry is to retain the crew if at all possible, and that the dismissal of a crew in toto, even when a ship is laid up for repairs for a period of a few weeks, is so rare as to be almost unheard of. The reason for this is obvious: the captain of a vessel would naturally prefer a crew accustomed to his vessel and experienced in its operation.

The testimony is full of numerous instances where whole crews were retained although the vessels were laid up for several weeks and longer. Work on the vessel itself while it is undergoing repairs can readily be found for the crew, and if for any reason that is not possible, they are recalled when the vessel is ready to sail gain. One vessel, the "Topa Topa," was laid up for no less than 60 days, and yet was reshipped with virtually the same crew. One witness, W. S. Lowry, employed in the Alabama Dry Docks, where the Waterman ships put in, testified: "The only ships I have seen come into drydock not having a crew on them is those which came out of the laid up fleet, or had been laid up for an indefinite period of time, and they generally took a new crew while in dry dock." Even when a ship is laid up a few members of the crew are necessary in order to keep proper watch on the vessel. It is only when a ship is laid up in the

"boneyard," i. e., for an indefinite period up the river, that one man will suffice for this purpose.

Not only did the members of the discharged crews testify to this effect but also witnesses favorable to the respondent. Ross, the business agent of the I. S. U., put it thus: Naturally the mem-
109 bers who come in on a ship, who don't wish to leave, and they are I. S. U. men, naturally they are entitled to stay," while Captain Nicolson, the executive vice-president of the Waterman Steamship Lines, himself admitted that it was not customary to lay off a whole crew although he could not see the obvious inconsistency between this admission and the respondent's pleadings. He thus testified (R. 502–3):

"Q. Is it customary to lay off the whole crew?

"A. In certain cases; yes, sir.

"Q. Will you say in the past year or year and a half that it has been the custom of the Waterman Steamship Corporation to lay off the entire crew when a boat goes up for repairs, stopping the question right there?

"A. We have in four or five cases.

"Q. Captain, my question is, is it customary, please?

"A. No.

"Q. It is not?

"A. Not the whole crew; a portion of the crew.

"Q. Then, if your answer filed in this case, signed by you, states that these men were laid off when the boats went into dry dock, and that such is the usual and customary procedure, then is nullified; is that correct?

"A. No; it is not.

"Q. Then how can you explain the situation?"

What happened when the "Bienville" and "Fairland" came into the port of Mobile was indeed so contrary to all recognized maritime usage that the crews were hopelessly confused. Although they must have all been told pretty much the same thing, some thought they were definitely dismissed while others apparently still thought that they would sail with their ships again when the repairs were finished. It is only necessary to compare the testimony of the different witnesses with respect to their lay-offs (R. 82, 159, 171–2, 201–2, 218).

That the members of the "Bienville" and "Fairland" crews were capable of doing a great deal of the work which was performed
110 on these ships in dry dock is not only admitted by respondent's witnesses but is manifest from the fact that a good many of them were actually employed on the ships while they were undergoing repairs. This employment was given to them on July 8, i. e., within a few days after the ships were laid up. The respondent contends that this demonstrates that no ill will was harbored towards these men, and that they were given such employment as was permissible under the terms of its contract with the I. S. U., which it did not regard as extending to shore gang work. It so happens, however, that this employment was given the very day after the despatch

of a telegram to Captain Nicolson by Charles Logan, the Regional Director of the National Labor Relations Board in New Orleans, warning the company against discrimination with reference to the employment of these crews. This was not merely a coincidence. It was also charged at the hearing that the respondent discriminated against the members of the two crews by laying them off from the shore gang work earlier than was necessary, and while the proof does not warrant the conclusion that this was so, there are indications that representatives of the Line talked to the members of the crews who were on the shore gang concerning their affiliation with the N. M. U. This is admitted in the respondent's own testimony, but the explanation was offered that it was merely explained to them that they would not be able to sail again on Waterman ships because of the preferential agreement of the company with the I. S. U. (R. 566). The respondent thus attempted to seize the opportunity, which resulted from the contact of its officers with the shore gang, to make them surrender their N. M. U. books. The testimony as to the shore gang work only emphasizes the anomalous character of the whole situation. It is highly significant that word was sent specially to the "Bienville" and "Fairland" crews that shore gang work was available for them. Thus Ingram, the assistant port engineer, testified (R. 586–88):

"Q. Didn't you state that you passed word around that the crews of the 'Fairland' and the 'Bienville' could come back and go to work?

111 "A. Yes, sir.

"Q. Why did you pick those two crews?

"A. I did not pick them for any special reason.

"Q. But you did pick them?

"A. Yes.

"Q. Were you trying to be fair with the N. M. U.; is that what you were attempting?

"A. I tried to be fair with every man.

"Q. I mean, I am talking about these two crews, was that your thought there?

"A. I never gave it any thought, and when I told the men it was a matter of course.

"Q. You just happened to think of those two crews for that reason?

"A. That is—those were the only two ships in port at that time.

"Q. There were other men there who were working for you?

"A. Well, I don't know.

"Q. You know, as a matter of fact, there were men who had worked in your shops besides the crews of those two boats, who were not working on the day when you sent for these men?

"A. I did not send for them.

"Q. Well, that you let it be known generally?

"A. Yes.

"Q. You knew that, didn't you?

"A. That they could work on the job?

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"Q. You knew that there were other men that had worked in your shops who were not working then?

"A. Yes.

"Q. But you picked out the "Bienville" and "Fairland" crews and sent special word to them?

"A. When there is a ship tied up there, I send word out, and I sent word out to that crew.

"Q. But you did distinguish there, didn't you?

"A. Yes."

The special case of Edmund J. Pelletier, the chief steward of
112 the "Bienville," is particularly instructive in considering the good faith of the respondent in laying off the crews of both vessels. He was the only member of the "Bienville" crew who, it is claimed, was laid off because his work was unsatisfactory. Pelletier joined the N. M. U. with the rest of the crew in Tampa. When the ship docked, Fagan, the port steward of the line, came aboard and at once asked if it was true that the whole crew had gone N. M. U. This fact confirmed, Fagan ordered Pelletier to lay off the men under him, and, a little later, took him aside in the salon and told him that he, too, was fired. The reason given by Fagan when he testified at the hearing was that in general Pelletier could not control his men; and, in particular, that he had asked for an extra mess boy just before the "Bienville" sailed although he had previously assured the port steward that everything was all right. To prove the general incompetence of Pelletier, counsel for the respondent offered a letter written by Captain Lund, of the "Bienville," to Captain Reed, the port captain of the line, in which he complained that the steward was not everything that should be. Captain Lund, who was doubtless at sea, did not himself testify, so there was no opportunity to subject him to cross-examination. However, Captain Lund's letter, brief as it is, is full of complaints, and the general impression created by the letter that it was written in a complaining mood. The fact is that on Pelletier's last voyage, unlike the previous voyage, the ship carried passengers—and a full complement of them—with the result that conditions on board were rather difficult, leading to an enormous amount of overtime. Fagan admitted that he had received many complaints similar to the type of those leveled against Pelletier but had never discharged a chief steward because of them. As for the incident of the mess boy, the proof shows that Pelletier had absolutely nothing to do with demanding or supplying him. The crew, learning that one of their mess boys would be assigned to the passengers, refused to sail, whereupon Ingram, the
113 assistant port engineer, went aboard and promised to put another mess boy aboard when the ship reached Tampa. The record of Pelletier shows that he had been at sea for almost 19 years and had been employed by the Waterman Steamship Corporation about three years. He was actually promoted from chief cook to chief steward, and received a considerable increase in pay.

The question of the knowledge of the respondent's officers as to doubtedly inspired by the fact that he had not only not prevented the stewards from joining the N. M. U. but had joined himself. But the very fact that in his case a special reason was sought for laying him off is what makes his case so significant. On a vessel as large as the "Bienville" it was necessary to keep the chief steward at least, even though the vessel was being laid up for repairs, and on the very same day that Pelletier was discharged he was replaced by the chief steward from another vessel. The respondent thus could not very well pretend that he was laid off because the vessel was put up for repairs, and hence in his case a reason for firing him had to be sought. Nothing could better illustrate the determination of the respondent's officers to dismiss the crews of the two vessels because they had changed unions in mid-voyage.

The facts already related are sufficient to establish the discriminatory character of their discharges. But the evidence also justifies the assumption that the "Bienville" and "Fairland" were laid up for repairs when they were, in order to be able to lay off the crews. In this connection it is important to emphasize that the intention of the respondent's officers must be judged on the basis of all the evidence relating to both ships. If the evidence with respect to one of the vessels indicates clearly that it was docked because of what had happened on its voyage, it is a certainty that the same is true with respect to the other, for the plan obviously represented a common design.

The question of the knowledge of the respondent's officers as to what had happened in Tampa is, of course, important with
114 respect to all phases of the case. But it is especially important in determining whether the existing situation influenced their resolution to repair the ships. It is inherently improbable that they would remain in ignorance. Tampa is not very far distant from Mobile. However, the evidence actually shows that Captain Nicolson was well aware of the state of affairs. Captain Nicolson was very evasive and contradictory in his testimony, and showed less than strict regard for the truth. He, as well as most of the respondent's witnesses, made a very poor impression on the stand. They contradicted each other on such vital points that the inescapable conclusion is that there was something they were trying to conceal. Captain Nicolson at first tried to make it appear that he had only received a general warning to abide by the contract, and that a good many months before the lay-offs of the crews of the "Bienville" and "Fairland." Thus he testified (R. 400-2):

"Q. * * * Now, I believe you stated in the answer, and I am quite sure you testified yesterday, that at the time these incidents occurred with reference to the 'Bienville' and the 'Fairland,' you were threatened with suits by the International Seamen's Union if you failed to live up to your interpretation of the contract?

"A. That is correct.

"Q. Were you so advised in writing by them?

"A. I was not advised in writing but the attorney for the International Seamen's Union of America, Judge Alex T. Howard, went to Mr. T. M. Stevens, the general counsel of the Waterman Steamship Corporation, and advised Mr. Stevens that if the Waterman Steamship Corporation violated any terms of that contract, they would be subject to suit, and after a discussion between our general counsel and counsel for the International Seamen's Union, our counsel agreed that we were subject to suit if we violated any terms of that contract.

"Q. But you were not so notified in writing by the International Seamen's Union?

"A. I was not notified in writing, nor did I hear any conversation which took place between counsel for the Seamen's Union and our general counsel.

"Q. And when did counsel for the International Seamen's Union and your general counsel confer on this question?

115 "A. I don't remember.

"Q. How soon after the docking of these two boats?

"A. I don't remember.

Examination by Trial Examiner:

"Q. Well, was it before the docking or after the docking?

"A. It was during the time of the contract. I don't know whether their discussion had anything to do with the 'Fairland' and 'Bienville' case.

"Q. By that do you mean that the discussion may have been had at any time since March 1936?

"A. Correct; yes, sir.

"Q. It may have been as long as a year ago?

"A. It may have been, or six months ago.

"Q. What is your best recollection as to what took place?

"A. I heard of that discussion three or four months ago, but I believe we can give testimony as to the exact date.

"Q. Well, you heard about it three or four months ago but the conversation may have taken place before that?

"A. Yes, sir.

"Q. Do you know how long before that it had taken place?

"A. No, sir.

By Mr. Hoskins:

"Q. Then there was no specific advice as to these men that would sue if you failed to carry out your interpretation of the contract?

"A. There was no written advice.

"Q. Was there any advice as to these men on these occasions?

"A. I don't remember.

"Q. There was none to you?

"A. I don't remember."

It will be observed from the foregoing testimony that the parties seemed indisposed to commit rather important positions to writing.

In any event, Captain Nicolson finally stated that he did not
116 know what had happened until after he returned from his

July 4th holiday, which was on July 6. Thus he finally testified (R. 550):

"Q. Captain, what was the first knowledge you had that the crews of the 'Bienville' had changed from I. S. U. to the N. M. U.?

"A. I really don't remember.

"Q. You do remember, don't you, that you received word, before you left on your July 4th holiday?

"A. No, sir; I did not. I did not receive word until after I returned.

"Q. Until after you returned?

"A. Yes, sir.

"Q. And the same thing applies to the 'Fairland'?

"A. Yes."

There was indeed no occasion for counsel warning the Waterman Steamship Corporation with respect to the obligations of its contract six months before the events that transpired on the two ships. But when they finally arrived in the Port of Mobile on July 5 and 6, respectively, there was ample occasion. Ross, the business agent of the I. S. U., who testified, admitted that Robert Epps, the Tampa agent of the I. S. U., who had made the unsuccessful attempt to keep Bennett, the N. M. U. organizer, off the "Bienville," had immediately informed him of the incident by telephone, and that he had sent a delegate down to the pier and made representations to the respondent. He definitely stated that he had gotten in touch with Captain Nicolson. He undoubtedly issued threats of reprisal not only when the ships came in but when they were ready to sail again. The only difference between the two occasions is that on the second the threats were made with the assistance of counsel. Ross was somewhat less positive with reference to the case of the "Fairland" than the "Bienville," but it cannot be doubted that he took precisely the same action as regards both ships. Thus Ross testified (R. 794–5, 795–6, 796–7, and 798–9):

117 "Q. Now as to the execution of the contract, have you, as the local authority of the International Seamen's Union, and as the properly delegated authority of the Seamen's Reorganization Committee, insisted and demanded that the Waterman Steamship Company should carry out this contract?

"A. Yes.

"Q. Have you consulted counsel in that regards?

"A. I consulted you in regard to that.

"Q. Did you state to the Waterman Steamship Corporation, or to any of its executive officers or counsel, that you had to insist upon it, and if it were not carried out as written that you would bring suit for damages against them?

"A. I did so; yes, sir.

"Q. Was that prior to coming into port of these ships, the 'Fairland' and the 'Bienville'?

"A. No; that was later.

"Q. About what time was it you notified the Waterman Company that you would hold them in damages?

"A. Possibly when they were about to put the crew back on the vessel, when I told Captain Nicolson t' at those men had divorced themselves from the International Seamen's Union, and that the new crew going on there must come to the Union hall under their rotation system.

"Q. Did you tell him, through counsel, that you would hold the company for damages if they did not do that?

"A. I sure did; yes, sir."

* * * * * * *

"Q. When did you first learn that the crew of the 'Bienville' had changed from the I. S. U. to the N. M. U.?

"A. When they returned to port here.

"Q. You did not know it before then?

"A. Yes, sir; I believe I was notified by the Tampa agent.

"Q. Mr. Epps from Tampa notified you?

"A. Epps, yes.

"Q. That same night they changed over?

"A. I don't know about the same night.

"Q. July 3rd or 4th?

118 "A. I don't know the date, I did not keep the dates at that time, because I just took it that those men had changed and I sent a delegate down to the pier when the 'Bienville' came in.

"Q. And you also made representations to the Waterman Steamship Corporation about the fact that they had changed over?

"A. At that time; yes, sir.

* * * * * * *

"Q. Now, when did you first learn that the 'Fairland' changed over, at the same time?

"A. When she came in here.

"Q. You learned it from Tampa also?

"A. I didn't keep no dates on that stuff. I just kept the rotation system of shipping lists in the Union hall, and for every ship that comes in here, no matter when she comes in, if they call for a crew.

"Q. I will ask you to confine your answers to my questions. Your agent in Tampa also let you know that the crew of the 'Fairland' changed over?

"A. No; I don't think he did.

"Q. They both changed the same night?

"A. Possibly they did, I don't know.

"Q. Didn't he let you know, when he notified you, didn't he tell you about both boats?

"A. I don't think he did, because I didn't take nobody's word for it. I went down as soon as the vessels came in to find out what it was.

"Q. You admit he told you about the 'Bienville'?

"A. He did, over the phone.

"Q. Didn't he also tell you at the same time about the 'Fairland'?
"A. I cannot remember whether he did or not.

* * * * * * *

"Q. Now, when did you first make, either yourself or through counsel, representations to the Waterman Steamship Corporation, that if they did not fulfill and carry out the contract you would bring suit for damages?
"A. Oh, that was about the time they were to reengage a crew for the 'Bienville' after extensive repairs.
"Q. Didn't you tell him the same thing several months or a year ago?
119 "A. Several months or a year ago?
"Q. Yes, not speaking with reference to the 'Bienville,' but just told them generally that you would do that?
"A. I don't know what you mean, Mr. Prosecutor.
"Q. Several months to a year ago, did you have a conversation with the chief counsel of the Waterman Steamship Corporation in which you told him that if they did not carry out the contract you would bring suit?
"A. That is about the only time I remember saying that.
"Q. After the boats got in here?
"A. When they were about to reship their new crew.
"Q. That is when you told them that?
"A. That is when I told him that.
"Q. You did not make any statement in writing, did you?
"A. I made it over the phone, but, of course, I saw my attorney here, Mr. Howard.
"Q. That was one point I wanted to clear up.
"Trial Examiner SEAGLE. By the way, with whom did you have that telephone conversation?
"The WITNESS. Captain Nicolson, of the Waterman Steamship Corporation."

Almost as important as the question of the knowledge of the respondent's officers is the question of their good faith. They attempted to create the impression that in the case of the Bienville and Fairland they were not motivated by any feeling of hostility or malice towards the N. M. U., but that as always they were merely attempting to carry out honestly the terms of their preferential agreement with the I. S. U. Yet there is abundant evidence to show that they had gone to great lengths not only to maintain the agreement but had far exceeded its requirements. By hiring its crews exclusively through the I. S. U. hall, a course of dealing which was not required by the contract, they had converted it from a preferential to a closed shop. The practice of hiring only through the Union hall did not exist from the
30 beginning but was put into effect some time later, a fact which indicates clearly that it was not necessary under the contract and was instituted voluntarily. Indeed, stewards, although covered by the contract, are still not hired through the I. S. U. hall (R. 128).

Moreover, when the occasion warranted it, and it was to the respondent's interest, they did not hesitate to disregard the contract. This is shown alone by an incident relating to a ship called the "New Yorker," which the respondent acquired in Oregon, changing its name to the "Pan-Kraft." When half the crew left the vessel in New York it was replenished with N. M. U. men although the master knew of the I. S. U. contract. Rather amusingly, Captain Nicholson, who had cited this instance to show that the line had no grudge against the N. M. U., then proceeded to explain that he did not think that the contract applied, because the vessel, although managed and operated by his line, was nevertheless owned by the Everett Steamship Company (which, however, the line controlled), and that the contract could and could not apply! At least as far as the Port of Mobile is concerned, the Waterman line officers never hired any but I. S. U. men, even when the I. S. U. hall could not supply them with full crews, in which case they were clearly entitled under the contract to look elsewhere. Captain Nicolson again testified that the Waterman vessels had always sailed with full crews, but when confronted with the fact that the line had filed affidavits in some cases, as required by statute, of inability to secure full crews, he admitted that on those occasions the N. M. U. had not been called.

It is important to realize that the respondent's officers had a strong preference for the I. S. U. and were indeed determined to keep the N. M. U. off its ships, as is also shown by its refusal to issue passes to delegates of this union, a subject that will be discussed below. It may seem that for the respondent's officers to lay up the "Bienville" and the "Fairland" intentionally in order to be able to dismiss the crews would be going to extreme lengths. But the problem presented by the defection of their crews went far beyond the immediate situation. If
121 the same crews were allowed to sail on the vessels, the defection might become widespread and extend to other vessels of the line, with the result that the N. M. U. might be able to organize its crews, a result that the respondent's officers were undoubtedly determined to prevent.

There are certain common factors which must be considered in connection with both ships. It must be recalled that the contract between the respondent and the I. S. U. provided expressly that it should not be construed "to apply to prompt reshipment." Thus, if the ships had sailed again within a day or so at the most there could have been no question but that the crews were entitled to take them out again. Counsel for the respondent conceded as much, and interestingly enough indicated that the question had been discussed at one time. Another and even more important factor is the type of repairs that were made on the vessels. If they were of a kind that had to be made at that particular time, there could be no suggestion of any conspiracy. The evidence indicates, however, without any doubt, that both vessels were perfectly seaworthy at the time and that the repairs done were largely of a structural character. Thus Captain Nicolson testified (R. 551-2):

"Q. Would you say it is a fair summary of the situation with respect to the 'Bienville' that the repairs made on it were of a structural character?

"A. Yes, sir. * * *

"Q. Now the 'Bienville' was seaworthy at the time when the structural repairs were made?

"A. Yes, sir; most of the work we did on the 'Bienville' was betterments, and it did not in any way affect or make her more seaworthy. It was betterments on the vessel.

"Q. In other words, the 'Bienville' could have sailed again as far as seaworthiness was concerned?

"A. She could; yes, sir.

"Q. And you decided to make repairs at that time?

"A. Yes, sir. * * *

"Q. Now, with respect to the 'Fairland,' what was the nature of the repairs on that vessel?

122 "A. I don't think we did any repairs to speak of on the 'Fairland' other than to clean and paint her at dry dock.

"Q. So that the 'Fairland' was seaworthy, was it not?

"A. Yes, sir; the 'Fairland,' after going on dry dock, was seaworthy, but she was held up to make her schedule; she was a little ahead of one schedule and a little behind on another.

"Q. So the 'Fairland,' too, as far as seaworthiness, could have sailed again?

"A. Yes."

It will be observed that Captain Nicolson thus gave as the reason for laying up the "Fairland" the fact that she was off schedule. The Captain thus further elaborated the reasons for the decision which was taken with respect to the "Fairland" (R. 514):

"The 'Fairland' was a few days late from schedule, and to get her back on her schedule it would have caused a lot of excessive overtime, and we decided to put her back a week on schedule, that is, we missed sailing the following week, and we decided that when she came in for a dry docking, we would kill her and hold her idle for several days to save crew's wages, subsistence, fuel oil, and other things."

This story of the Captain must also be rejected, and for several reasons, the most curious of which is perhaps the fact that the "Fairland" really had to be laid up at that particular time. The insurance regulations required dry docking every nine months, and in the case of the "Fairland" it was due by July 28, 1937. The regulations of the Bureau of Marine Inspection and Navigation required the tail shaft of the vessel to be drawn by July 10, 1937. Thus the "Fairland" could not have made another voyage without violating the regulations. Now, the very fact that the vessel really had to be dry docked for these purposes shows that the story that it was laid up because it was off schedule was probably false. Moreover, as so frequently Captain Nicolson was contradicted by some of his own witnesses, particularly by those in the

best position to know. Thus Captain Reed, the port captain of the Waterman Line, testified (R. 764–5):

123 "Q. What is your understanding as to why the 'Fairland' was tied up at this time? At this particular time? And went through these repairs?

"A. Because they were due.

"Q. Because they were due?

"A. I am sure that was the reason.

"Q. That is the reason?

"A. I am sure.

"Q. You do not understand the reason to be that they got behind on their schedule?

"A. I don't know whether they were or not. I would have to check that back, check up on the ship to see if it was behind * * *.

"Q. How often in the past year have you cancelled a prearranged schedule for a Porto Rican boat?

"A. I have a recollection of one.

"Q. How long ago was that?

"A. I have a recollection that the 'Fairport' missed a week about a month or six weeks ago. * * *

"Q. But you will admit that it is a very unusual procedure?

"A. Yes; it is an unusual procedure, no doubt."

Captain Nicolson was further contradicted by Captain Norvelle, the master of the "Fairland." The testimony of the latter, moreover, is particularly revealing because it shows that the original plan was to drydock the vessel only, and not to make any repairs. This drydocking would ordinarily have taken about 24 hours only. Thus Captain Norvelle testified (R. 461–4):

"Q. When did you receive definite instructions to go into drydock?

"A. I got a letter in Tampa saying that we were going into drydock upon arrival in Mobile, and to take her to the Alabama Dry Dock. * * *

"Q. And did you in that same letter receive instructions to discharge the crew?

"A. No, sir; not in that letter; no, sir.

"Q. You got those instructions when you got in here?

124 "A. Immediately upon arrival, yes, sir; when we docked.

"Q. You say it was immediately upon arrival. Do you remember whether or not it was before or after you reported to Mr. Ingram the incident over in Tampa? * * *

"A. No; I didn't mention it to him.

"Q. Did he say anything to you about it?

"A. No, sir.

"Q. He did not mention the crew to you one way or the other, except to discharge them?

"A. That is all. * * *

"Q. Your general custom is to sign the men off and on right away, if they are going to sail again?

"A. Yes, sir.

"Q. Can you tell us, Captain, any occasions where you have ever signed them off and not signed them on for 24 or 36 hours and worked them in the meantime?

"A. I don't recall that.

"Q. Do you always know, as soon as you get into port, when you are going out again, and where?

"A. Yes.

"Q. And you sign them right back on?

"A. Yes.

"Q. And the Commissioner knows it so he can have articles right there and have everything ready?

"A. Yes, sir.

"Q. Have you ever had those plans changed?

"A. Not on the ships I have been running; no, sir. * * *

"Q. You thought it was the regular twenty-four-hour lay off?

"A. Yes.

"Q. And when did you learn that she was going to be laid up?

"A. When Mr. Ingram came aboard.

"Q. The laying up plan, then, had been something that was contemplated in Tampa?

"A. No, sir.

125 "Q. It was something that came into existence after you sailed from Tampa and before you came to Mobile, is that right?

"A. Yes.

"Q. So, as you sailed into Mobile, you and your officers contemplated making a rather quick voyage again, is that not right?

"A. What is that?

"Q. As you came into Mobile, you and your officers planned to sail as soon as you got through your 24-hour drydocking; it was nothing unusual?

"A. Yes.

"Q. And it was only after you got in here that you were informed by Mr. Ingram that you were going to be laid up awhile?

"A. Yes."

Ingram, the assistant port engineer, tried to come to the rescue of Captain Nicolson but it cannot be said that he had much success. It is only necessary to read his testimony (R. 579–81):

"Q. I believe you testified that this drydocking of the 'Fairland' was contemplated when the boat went out; is that true?

"A. Yes.

"Q. Did you inform the Captain, before he took the boat out on the previous voyage, that you were going to put it into drydock?

"A. To the best of my recollection.

"Q. Did you hear Captain Norvelle's testimony?

"A. Yes.

"Q. Did you hear him state that he did not know, until he reached port on that voyage, that the boat was to be put in the yards after it was in drydock?

"A. He said he got his information in Tampa, wasn't that what he said?

"Q. No, sir.

"A. Well, to the best of my recollection, like I said at first——

"Q. Did you hear him say that, that was the question?

"A. Yes, sir.

126 "Q. Was that wrong or right?

"A. I should say that that was wrong. I think—I wouldn't swear to it—but I think I told him and the chief engineer.

"Q. You told him when?

"A. Previous to sailing from Mobile.

"Q. That the boat was not only going into drydock——

"A. No; into dry dock. I didn't tell him——

"Q. My question is this: Captain Norvelle testified, to the best of my recollection, although the record is clear on the point, that he did not know until he reached Mobile that the boat was not only going into drydock but was to be tied up for repairs?

"A. Well, as far as tied up, I did not have any plans to tie it up previous to sailing.

"Q. In other words, the tying up were carefully guarded plans?

"A. No, sir.

"Q. When were these plans formulated?

"A. I can't say; it was after that——

"Q. Do you mean after he left Tampa?

"A. I can't be positive, but we make these quick changes.

"Q. You are capable of making quick decisions, aren't you?

"A. Sometimes you have to be careful when you do make them.

"Q. You are not testifying that these plans were not made before the boat left Tampa, are you? Your recollection is they were made before the boat left Tampa or after——

"A. I am not.

"Q. But you canot fix the date?

"A. No, sir."

The best evidence is that as a result of the change in plans the "Fairland" was laid up for a period of from five to six days. The time may have even been less. Information as to the exact length of the period was requested and promised at the hearing but

127 never produced (R. 631). In any event, it is certain that the "Fairland" was not laid up for more than a week. But the period, whether five, six, or seven days, apparently sufficed in the estimation of the interested parties as a justification under the contract for the acts of laying off and refusing to reship the crew.

In the case of the "Bienville," Captain Nicolson began with the following explanation. The "Bienville" was acquired by the Waterman Steamship Corporation early in 1937, and the ship was then named the "Exarch." Being very busy, and having more cargo than

they were able to handle—a fact that is of great significance with respect to both ships—they had no time to recondition the vessel, and she was sent out on her first trip under the Waterman management. Still unable to take her out of active service, she was sent on a second trip, the voyage that ended on July 6. "On the time we loaded her out on the second trip," continued Captain Nicolson, "we made definite arrangements to take her off the run for about a month when she returned, * * * and we ordered considerable steel, considerable material from steel manufacturers to do these anticipated repairs, and all preparations were made to start the repairs immediately upon the arrival of the vessel in Mobile about the 5th or 6th of July."

Upon cross-examination, however, Captain Nicolson was confronted with the fact that on June 22, at a hearing before the National Labor Relations Board in New York City in the case of the American France Line et al. and the International Seamen's Union, counsel for the Waterman Steamship Corporation had entered into a stipulation which showed that there had been as late as that time entirely different plans for the "Bienville" than those he had described. He ended by admitting that the elaborate plans he had detailed were made for the "Azalea City," a sister ship of the "Bienville," rather than the latter vessel. In the testimony that follows the date of the Board hearing is given as July 22, but that is a stenographic
128 error. It should also be noted that the "departure" of the "Bienville" referred to in the scheduled list of stops is departure from Tampa, Florida, on the date in question. Thus Captain Nicolson testified (R. 520–22):

"Q. Captain, don't you know, as a matter of fact, on July 22nd, at a hearing before the National Labor Relations Board in New York City, the respondent submitted a stipulation to the Trial Examiner, in which they gave the following schedule for the "Bienville": Departure, July 2nd. Panama City, Florida, July 5th. Pensacola, Florida, July 8th. Gulfport, July 9th. Mobile, July 11th to 15th.

"A. I don't know about that.

"Q. You knew that that case did take place up there?

"A. What case is that?

"Q. The American France Line et al., and International Seamen's Union, to which the Waterman Steamship Corporation was a party and was represented by counsel?

"A. I will have to look up the schedules, I don't know.

"Q. You do not have any doubt but that this schedule was correct, do you? I mean, it states here: 'The Waterman Steamship Corporation hereby submits the following facts in connection with the stipulation entered into,' and so forth.

"A. I know that we arranged several weeks beforehand to repair the "Bienville."

"Q. Captain, you just told me in May you planned all these extensive repairs and knew it would take several weeks?

"A. That is correct.

"Q. But on June 22nd the Waterman Steamship Corporation evidently thought they would only take five days. Now, June 22nd was a bare two weeks before the ship was actually laid up?

"A. I think I can explain that very well.

"Q. I wish you would.

"A. No doubt when this schedule was given the vessel was supposed to arrive in Tampa July 2nd.

129 "Q. The vessel did arrive in Tampa July 2nd, didn't it?

"A. And she was going to Panama City, Pensacola, Gulfport, and Mobile to discharge cargo, and we brought her right in here, instead of sending her around to those other ports.

"Q. Captain, I don't think that explains the difference between the three weeks you had planned in May and the four days that you stipulated in June. The boat was right on schedule, wasn't it?

"A. It was not, she arrived, she was not to have arrived until July 11th.

"Q. And then she got here five days ahead of schedule?

"A. That is correct.

"Q. There were several stops cancelled out after Tampa?

"A. That is correct.

"Q. And the four days stipulated on June 22nd was changed to three weeks, but you had planned those three weeks, the three weeks schedule, or a month, before that stipulation was entered into?

"A. Apparently, I would say yes. The 'Azalea City' and the 'Bienville' are sister ships, and it can be quite possible that we ordered this material for the 'Azalea City' and we sent the 'Azalea City' into Georgetown, and it was our intentions to do the repairs on the 'Azalea City,' but due to some mix-up in schedule, or due to the 'Azalea City' being in Georgetown, and being able to send her around the Gulf more economically, it is possible we substituted the 'Bienville' for the 'Azalea City.'

"Q. Captain, do I understand you correctly in saying now that you are not sure whether you made these plans in May?

"A. The two ships are sister ships.

"Q. Are you sure or aren't you sure?

"A. I am not sure we made plans on the 'Azalea City' or the 'Bienville' when we ordered this material.

"Q. And you want to change all of your testimony along that line, is that correct?

"A. I guess that is correct; yes."

Following Captain Nicolson's testimony, witnesses for the respondent made heroic efforts to explain the situation. Ingram, the
130 assistant port engineer, thought that it was decided to repair the "Bienville" while she was on her way back from Havre, France. He also said that they had ordered steel but wasn't sure whether for the "Azalea City" or the "Bienville" (R. 601 seq.). Captain Reed, the port captain, produced a sailing schedule for Waterman ships from April through August 1937, which he said had been under the glass top of his desk ever since the former month

It consisted of a typewritten sheet of paper showing the contemplated trips, or status of the Waterman vessels. This schedule seems to show that it was not contemplated to lay up the "Azalea City," but that it was planned to lay up the "Bienville" for repairs. If Captain Nicolson was right, after all, why had he changed his testimony? The only natural explanation is that he did have something to conceal. In any event the June 22 schedule offered at the hearing, being much later than the April schedule, must be regarded as having superseded it and as representing the plans which existed with respect to the "Bienville" about two weeks before she came into Mobile and was laid up for repairs. On June 22 it was planned that the "Bienville" would be at Mobile for only four days, which might be "prompt reshipment." On July 6 the "Bienville" was taken out of service for several weeks. In addition to the April to August sailing schedule, and the stipulation at the hearing, there is also in evidence a notice issued at the Waterman office in Mobile, which bears the date July 1, 1937, stating that the "Bienville" was due to arrive at Tampa that day "with 797 tons inward cargo for Tampa, 29 Panama City, 188 Pensacola, 38 Gulfport, and 1616 Mobile." The notice continues: "From Tampa she will proceed to Pensacola and Mobile. Voyage No. 2 (the voyage which actually ended on July 6) will end at midnight following completion of discharge of Mobile cargo, at which time vessel will go on inactive status for a period of twenty days." There is nothing in this notice which is inconsistent with the assumption that it was issued after the shift of the crew became known. The most important and incriminating fact is, however, that whatever the previous plans, several stops of the "Bienville" were
131 cancelled out, with respect to ports to which the vessel was carrying cargo. This haste was undoubtedly inspired by the desire to get rid of the crew.

The same fact makes largely irrelevant the testimony of Fagan, the Waterman port steward, to the effect that several weeks before the "Bienville" docked, Captain Nicolson had told him that the "Bienville" would be laid up for 30 days, and asked him, in view of the fact that the steam would be killed on the vessel, whether he would be able to serve a Rotary Club luncheon under the circumstances. Fagan proved a rather unreliable witness when he testified as to the discharge of Pelletier, and the inherent improbabilities of his story make it difficult to accept it at its face value. The Rotary Club luncheon did not take place until about July 17. Why should Captain Nicolson have spoken to Fagan about it over a month in advance? It was a weekly Rotary luncheon and its unusual character lay only in the fact that it was given on board ship. Certainly Captain Nicolson did not tell him the ship would be laid up for 30 days, and if he was mistaken about this, he might very well have been mistaken as to the date of the conversation.

As in the case of the "Fairland," there is no exact information as to the length of time for which the "Bienville" was laid up. Some of the witnesses seemed to think it was for a period of three weeks, and

certainly this may be accepted as the outside limit. Captain Reed, who was probably in the best position to know, thought the ship was laid up for only 16 days, and this figure may be accepted as approximately correct.

Since the respondent's officers arranged to lay up the ships purposely, they can hardly interpose the I. S. U. contract as a defence. It remains only to consider whether, even if this were not so, they were entitled to refuse to reinstate the crew because of the "prompt reshipment" clause of the contract. What would constitute "prompt reshipment"? Numerous witnesses attempted to testify as to the
132 meaning of the term, and seemed to imply that it was a term well understood in maritime circles. But when cross-examined it would become apparent that they were merely giving their own private interpretation of the term based upon their conception of the dictionary meaning of "prompt." Even Nicolson, who with his usual confidence averred that "prompt reshipment" had a precise meaning, ended by admitting that it was not an expression used in maritime contracts but only in "discussions" among shipping men, and that he was merely stating his own "judgment" in attempting to define the term. (R. 508, 509). Captain Reed also testified to the same effect (R. 748):

"Q. Have you ever seen the term 'Prompt Shipment' used in any contract, any maritime contract?

"A. I can't say I have.

"Q. Only in the I. S. U. contract?

"A. In fact that is the only contract I have seen it in."

The term "prompt reshipment," having in fact no settled significance, it becomes necessary to interpret it by inquiring into the purpose for which it was inserted in the I. S. U. contract. Now, in the first place, it is manifest that the term refers not to the period within which a vessel arrives and departs but to the period within which the crew resigns the articles, and hence reships. The witnesses, who, relying on the dictionary meaning of prompt, testified that a prompt reshipment was one in which the vessel reshipped within 48 hours or so, were really stating a palpable absurdity. The loading of a vessel takes an average of several days, and may take as much as five or six. In the case of most sailings, therefore, the "prompt reshipment" clause could serve no purpose. The testimony also shows that it is not maritime practice to have the crewn sign the articles when the ship docks but a day or so before it is ready to ship again. Thus in the average case five or six days would frequently elapse before the crew was reshipped in the proper sense of resigning the articles.

133 Approximately the same time elapsed in the case of the "Fairland." It was in dry dock for not more than 30 hours, and spent at least a day at the loading berth. The whole time the vessel spent in port was not much longer, if at all, than the time spent on a vessel not undergoing repairs. Indeed, it must be apparent that repairs may often be made on a vessel while she is being loaded. It is only necessary to dry dock when the repairs are below the waterline.

Moreover, the repairs done on a vessel may be done in installments during loading periods, especially when, as in the case of both the "Fairland" and the "Bienville," traffic was good, if not heavy—a possibility that lends further support to the assumption that the respondent's officers at least extended the periods during which the vessels were laid up. Certainly in the case of the "Fairland" there was "prompt reshipment," and the respondent cannot interpose the defence of the I. S. U. contract.

Everything considered, the same conclusion is justified with respect to the "Bienville." Although laid up from two and one-half to three weeks, the time was definite, and it was known when the crew would be needed. Although lately the respondent's officers have been treating the I. S. U. contract as establishing a closed shop, when the contract was made, they were careful to reserve to themselves the right to maintain existing crews irrespective of their union affiliation, and for obviously good reasons, and it is in the light of the situation when the contract was first made that it must be interpreted. A preferential agreement, which is contrary to the general principles upon which the National Labor Relations Act is founded, must be strictly construed. Considered with reference to the purpose for which the prompt reshipment clause was inserted, it can be stated to be the establishment of a policy of continuity of employment. Hence the contract must be taken to justify the reshipping of a different crew only when a vessel is laid up for an indefinite period of time.

There is a good deal of evidence in the record which indicates indeed that the respondent's officers had far from full confidence in
34 the interpretation of the contract which was urged upon them. It will be recalled that Ross had to renew his threats when the vessels were about to be reshipped, and that the members of the crew themselves were somewhat confused as to whether they were laid off or discharged. It will be recalled also that while a good many of the members of the "Bienville" and "Fairland" crews were working on the vessels as members of the shore gang, an effort was made to get them to renounce the N. M. U. so that they could sail their ships again. The hesitation and vacillation thus displayed by the respondent's officers show that they were doubtful as to what course it was permissible for them to pursue in view of the I. S. U. contract.

Five members of the "Bienville" crew testified at the hearing, i. e., Clarence W. Turner, Dudley Beuk, Earl R. Wilkerson, Joseph B. Morrow, and Edmund J. Pelletier. James C. Stewart is the only member of the "Fairland" crew who testified at the hearing. When a complainant in a discharge case involving factory or other similar employment does not appear to testify, there may be a presumption that he does not wish his claim to be pressed. Such a presumption should not be indulged with respect to seamen. Of course, in cases involving discharges for cause, the absence of a seaman would lead to a lack of proof as to the circumstances of his case. Such, however, is not the situation here, except with reference to Pelletier, and he did testify. The testimony shows that all the members of the "Bien-

ville" crew, with the exception of Pelletier, joined the N. M. U. and were laid off and refused reinstatement for that reason alone. Hence, even if all the members of the crew were available, it would not be necessary for each one to testify. The testimony also shows that all the members of the "Fairland" crew joined the N. M. U., with three exceptions, i. e., J. Shaugnessy, D. Souner, and Leland H. Gaither. The testimony of James C. Stewart, of the "Fairland" crew is that all joined except two able seamen and one ordinary seaman, and the three named are the only three who were not identified by either Stewart himself or Bennett, the N. M. U. organizer, as having joined the N. M. U. The names of the members of both the "Bienville" and "Fairland" crews may be further verified by the articles
135 of the vessels, which are in evidence. There appears to be some variances between the spelling of the names in the complaint, the articles, and exhibits furnished by the respondent showing the present employment of the "Bienville" and "Fairland" crews on vessels of the respondent. For purposes of convenience the names will be given as listed in the articles. The exhibits show that some members of the "Bienville" and "Fairland" crews have renounced the N. M. U. and rejoined the I. S. U. and have been given employment on various vessels of the Waterman lines, or have secured substantially equivalent employment elsewhere. B. H. Ingram, W. Reynolds, and Lewis Jones, of the "Bienville" crew, have renounced the N. M. U. and are now employed on Waterman vessels. The same is true of the following members of the "Fairland" crew: H. Bowen, F. Bodden, W. R. Gold, E. X. Rhone, Bennett Baptiste, and H. Hall. Two members of the "Bienville" crew, J. E. Gilroy and M. E. Jones, have secured substantially equivalent employment.

The employees whose names are listed in Appendix A, attached hereto and made a part hereof, being members of the crew of the "Fairland," and the employees whose names are listed in Appendix B, attached hereto and made a part hereof, being members of the crew of the "Bienville," were laid off by agents of the respondent on July 5 and July 6, 1937, respectively, with the exception of E. J. Pelletier, who was discharged by an officer and agent of the respondent on July 6, 1937, and have all since been refused employment by the respondent for the reason that the said employees joined and assisted a labor organization known as the National Maritime Union of America and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection, except that H. Bowen, F. Bodden, W. R. Gold, E. X. Rhone, Bennett Baptiste, H. Hall, B. H. Ingram, W. Reynolds, and Lewis Jones have been reinstated in the employ of the respondent upon renouncing their membership in the National Maritime Union of America, and rejoining the International Seamen's Union of America. By the said termination of employment of the said employees, except
136 as aforesaid, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and discouraged

membership in the labor organization known as the National Maritime Union of America, and encouraged membership in the labor organization known as the International Seamen's Union of America.

There remains to be considered the case of C. J. O'Connor, of the "Azalea City." It is the contention of the respondent that O'Connor was not discharged but left the ship of his own accord at the termination of the voyage. The evidence shows that O'Connor left the "Azalea City" on July 14, 1937, but it was at the suggestion of Ingram, the port engineer of the respondent. He was one of the engineers on the "Azalea City," and had sailed in this capacity on the ships of various lines for about 14 years, and for Waterman since 1929. During his last voyage on the "Azalea City" he, as well as the other engineers, was required to work a great deal of overtime, and in Manchester, England, he was deputed by his fellow engineers to complain to the chief engineer, which he did, insisting also that an entry be made in the log book to show that they were working the extra hours under protest. He was told by the chief engineer that the matter would be straightened out when the ship reached Mobile. The engineers regarded the overtime as a violation of the Copeland Act, as well as of the terms of the contract between the respondent and the M. E. B. A., of which they were all members. When the ship reached Gulfport, the chief engineer of the "Azalea City" reported to Ingram, who talked to O'Connor and told him that when he got to Mobile he should take his annual vacation (as provided in the M. E. B. A. contract), and they would straighten the whole matter out in Mobile. O'Connor reported to the two other engineers and in Mobile attempted, through Pearsall, a business agent of the M. E. B. A., to get a conference with Captain Nicolson, under the arbitration clauses of the M. E. B. A. agreement, but was unable to get any satisfaction. Since Ingram, before the commencement of the voyage of the "Azalea City," had promised to get him an assignment to a coastwise vessel, and had told him to take his
137 vacation, he signed off the articles in Mobile on July 14.

Ingram admitted both that he had promised O'Connor a job on a coastwise vessel and that he had told him to take his vacation. He said, moreover, that he discovered within a few days that O'Connor was not entitled to a vacation under the contract because he had not been the requisite amount of time at sea. Yet he made absolutely no attempt to communicate the discovery of his error to O'Connor. The testimony shows that it was the custom for the Waterman officers to notify an engineer when he was wanted, and this Ingram did not deny. He asserted, however, that when an engineer was on a vacation, it was for him to first report to the office at the end of the vacation. But since he had discovered that O'Connor was not entitled to a vacation, this custom could hardly apply, and it would have been obviously common sense for Ingram to notify O'Connor. Moreover, the latter met Ingram on the street in Mobile and asked the port engineer if the Waterman line would give him employment. Ingram

asserted that he did not regard this as a sufficiently formal request, and indeed thought that O'Connor was joking. If he really thought so, the joke lay entirely in the fact that Ingram knew that the Waterman line had no intention of employing O'Connor because of the leadership he had taken in attempting to enforce the rights of the engineers under the M. E. B. A. control. When he had told him to take his vacation, he had really been engaged in getting rid of him for the same reason.

Thus the said C. J. O'Connor was discharged by Ingram, an agent of the respondent, on July 14, 1937, and has since been refused employment by respondent for the reason that the said C. J. O'Connor joined and assisted a labor organization known as the Marine Engineers' Beneficial Association, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid or protection. By the said discharge and refusal to employ said C. J. O'Connor, respondent has interfered with, restrained, and coerced
138 its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and discouraged membership in the labor organization known as the Marine Engineers' Beneficial Association.

(b) The refusal to issue passes to N. M. U. representatives

The respondent admits that it has refused to issue passes to N. M. U. representatives to enable them to board its ships, and its officers declare that they will continue to do so. The respondent, however, issues passes to I. S. U. representatives. It does so under the terms of Article II, Section 3, of the I. S. U. contract, which provides: "The authorized representatives of the Union shall have the right to go on board ships covered by this agreement, subject to regulations prescribed by the Owners, for the purpose of consulting with seamen employed thereon. Under no circumstances shall representatives of the Union interfere with the men while at work, and on no account is ship work or sailing of ship to be hindered or delayed." Section 4 of the same article goes on to provide that the Union shall take out insurance for the protection of the steamship owner against any claims arising from injury to its representatives while on board the ships, and that it shall provide satisfactory evidence of having secured such insurance. It is quite characteristic of the respondent's officers that they have never attempted to ascertain whether the I. S. U. has ever taken out the insurance required under the contract (R. 522–24). It is a question whether these provisions of the contract are still binding on the respondent, in view of the fact that the I. S. U. is now defunct, but assuming that they are, they plainly do not prohibit the issuance of passes to the representatives of any other labor organization. The contract establishes not a closed shop but a preferential shop, and hence contemplates that other labor organizations may have business on board the respondent's vessels.

The contract therefore can be no excuse for the denial of passes to N. M. U. representatives.

139 The respondent also contends, however, that it has issued instructions to its masters and notified the union to the effect that in the future I. S. U. representatives would be permitted to board its vessels only for the purpose of collecting dues. Such instructions were issued by letter on July 12, 1937, but the evidence does not indicate that the respondent has taken any steps whatever to see that they were observed. Ross, the agent of the I. S. U., in acknowledging the receipt of a letter of Captain Nicolson, discussing the matter, declared the representatives of the union would board ships "to collect dues and to attend to matters relative to the work and agreements existing (R. 524). Captain Norvelle, the master of the "Fairland," who also received a letter relative to the matter of the passes, testified that no attempt was made to see to it that the I. S. U. delegates confined themselves to the collection of dues. Thus he testified (R. 456):

"Q. And then you started putting the letter into effect?

"A. That is right.

"Q. But you did let I. S. U. men board the ship, didn't you?

"A. To collect dues.

"Q. Did you send anybody around with them to see what they were doing?

"A. No.

"Q. How do you know what they did?

"A. I don't know, I said 'to the best of my knowledge.'

"Q. But, as a matter of fact, you don't know?

"A. No, sir.

"Q. You don't know what they said to the individual men they talked to?

"A. No, sir.

"Q. And they were permitted to go and talk to the men, provided they did not interfere with their work?

"A. Yes.

"Q. And when you told their officer to follow the terms of the letter he did just that?

140 "A. Yes.

"Q. And you don't know whether or not they brought literature aboard or any printed matter?

"A. No, sir.

"Q. You don't know whether they just restricted themselves to the collection of dues?

"A. No, sir."

It may be that it is next to impossible to implement properly the type of instructions issued by the respondent's officers. But that only further demonstrates their futility, and points to the necessity of issuing passes to the N. M. U. as well as the I. S. U. On the other hand, even if the instructions could be scrupulously enforced, the N. M. U. must still be deemed entitled to passes for the purpose of

collecting dues. It cannot be assumed that they have no members in the respondent's employ. Again it is necessary to point out that the contract with the I. S. U. by its terms establishes only a preferential shop. When a vessel is in port, it constitutes not only the place where the crew works, but also its living quarters, and for this reason the exclusion of the representatives of one union while another is permitted access is a discrimination in favor of the one as against the other union.

The respondent, by granting passes to board its ships to representatives of the I. S. U. in the past, and continuing to grant such passes to representatives of the S. R. C. while at the same time refusing to issue passes for the same purpose and under the same conditions to representatives of the N. M. U., has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

In view of the fact that the answer of the respondent expressly admits that its activities constitute trade, traffic, commerce, transporation, and communication between the United States and
141 foreign countries, little need be said to demonstrate the effect of its unfair labor practices upon commerce. The respondent operates about 25 vessels, which ply between Mobile, Alabama, and ports on the Gulf and Puerto Rico and European countries. These vessels carry passengers as well as freight. In connection with their operation the respondent maintains in various ports, piers, terminals, and other facilities which are usual in the course of shipping. The respondent also manages the vessels of the Everett Steamship Company, of which it owns a majority of the stock. Through the Pan American Steamship Company, which it controls, it also operates vessels in the American coastwise trade. In the winter of 1936 a strike in the Port of Mobile resulted in the tie up of some of its vessels.

I find that the activities of the respondent set forth in Section III above, occuring in connection with the operations of the respondent described in Section IV, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and between the United States and foreign countries, and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce.

Conclusions and recommendations

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes:

1. Respondent, through its officers and agents, by laying off on July 5 and 6, 1937, respectively, the employees whose names are listed in Appendix A, being members of the crew of the Fairland,

and the employees whose names are listed in Appendix B, being members of the crew of the Bienville, and by discharging E. J. Pelletier, listed in Appendix B, on July 6, 1937, and by refusing employment to the said employees since these dates for the reason that the said employees joined and assisted a labor organization known as the National Maritime Union of America and engaged in concerted
142 activities for the purpose of collective bargaining and other mutual aid and protection, except that H. Bowen, F. Bodden, W. R. Gold, E. X. Rhone, Bennett Baptiste, H. Hall, B. H. Ingram, W. Reynolds, and Lewis Jones have been reinstated in the employ of the respondent upon renouncing their membership in the National Maritime Union of America, and rejoining the International Seamen's Union of America, has discouraged membership in the labor organization known as the National Maritime Union of America and encouraged membership in the labor organization known as the International Seamen's Union of America, and has thereby engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7) of the National Labor Relations Act.

2. Respondent, through its officers and agents, by discharging on July 14, 1937, C. J. O'Connor, of the Azalea City, and by refusing employment to the said C. J. O'Connor since this date for the reason that the said employee joined and assisted a labor organization known as Marine Engineers' Beneficial Association and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection, has discouraged membership in the labor organization known as the Marine Engineers' Beneficial Association, and has thereby engaged in an unfair labor practice affecting commerce within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7) of the National Labor Relations Act.

3. Respondent, by granting passes to board its ships to representatives of the International Seamen's Union of America in the past, and by continuing to grant such passes to representatives of the Seamen's Reorganization Committee while at the same time refusing to issue passes for the same purpose and under the same conditions to representatives of the National Maritime Union of America, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and has thereby engaged in unfair labor practices affecting
143 commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act.

Wherefore, the undersigned recommends that:

1. The respondent cease and desist from:

(a) Interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection;

(b) Discouraging membership in the National Maritime Union of America, the Marine Engineers' Beneficial Association, or any other labor organization of its employees, or encouraging membership in the International Seamen's Union of America, its successor, the Seamen's Reorganization Committee, or any other labor organization of its employees, by laying off, discharging or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization;

(c) Urging, persuading, warning, or coercing its employees to join the International Seamen's Union of America, its successor, the Seamen's Reorganization Committee, or any other labor organization of its employees, or threatening them with discharge if they fail to join any such labor organization;

(d) Refusing to issue passes to board its ships to representatives of the National Maritime Union of America under the same terms and conditions as such passes are issued to representatives of the Seamen's Reorganization Committee.

2. The respondent take the following affirmative action to effectuate the policies and purposes of the National Labor Relations Act:

(a) Offer to C. J. O'Connor and to the employees whose names are listed in Appendix A and Appendix B, with the exception
144 of H. Bowen, F. Bodden, W. R. Gold, E. X. Rhone, Bennett Baptiste, H. Hall, B. H. Ingram, W. Reynolds, Lewis Jones, J. E. Gilroy, and M. E. Jones, immediate and full reinstatement to their former positions without prejudice to their seniority or other rights and privileges;

(b) Make whole C. J. O'Connor, and the employees whose names are listed in Appendix A and Appendix B for any loss of pay they may have suffered by reason of their lay-offs, discharges, and subsequent refusals to reemploy, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount earned by him during such period;

(c) Post immediately notices to the members of its crews upon its docks in ports in the United States at which its vessels touch, and upon its vessels, stating (1) that the respondent will cease and desist in the manner aforesaid; (2) that in order to continue employment upon its vessels the members of its crews need not become or remain members of the Seamen's Reorganization Committee; (3) that the respondent will not discharge or in any manner discriminate against members of the National Maritime Union of America, or any other labor organization of its employees, who may be employed upon its vessels, or any person assisting such organizations by reason of such membership or assistance; (4) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting;

(d) Notify the Regional Director for the Fifteenth Region in writing within ten (10) days from the date of the service of this report what steps the respondent has taken to comply with its recommendations.

3. That the complaint be dismissed in so far as it alleges that the respondent violated Section 8 (3) of the National Labor Relations Act by terminating the employment of John R. Roberts, Joseph R. McCoy, and Reese Bryars.

4. It is finally recommended that unless the respondent
145 notifies the said Regional Director in writing within ten days of the service of this report that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board, and that said Board issue an order requiring respondent to take the action aforesaid.

Dated Jan. 17, 1938.

(Signed) William Seagle,
WILLIAM SEAGLE, *Trial Examiner.*

146 APPENDIX A

M. James Dobbs	A. C. King
R. S. Kettlewell	J. B. Hamilston
Claude Smith	C. W. Turner
Otto K. Ortleb	Fred Gordy
R. Crawford	H. E. Lee
Eric Butcher	B. H. Brown
Charles Perkins	William Rodin
Jesse J. Scott	Dudley Beuk
Andrew Benion	C. W. Wilson
Columbus Anderson	E. J. Pelletier
James C. Stewart	Pedro G. Lopez
H. Bowen	Joseph B. Morrow
F. Bodden	Richard Schuettner
W. R. Gold	Robert Reynolds
E. X. Rhone	Kenneth Graham
Bennett Baptiste	E. Wilkerson
H. Hall	M. J. Burgess
A. McGregor	J. E. Gilroy
J. M. Jefferies	B. H. Ingram
H. Zilberman	W. Reynolds
Wesley Howard	M. E. Jones

148 Before the National Labor Relations Board, Fifteenth Region

Case No. XV-C-75

[Title omitted.]

Respondent's exceptions to intermediate report

Comes the Waterman Steamship Corporation, the respondent in the above styled cause, and desiring to take exception to the Intermediate Report, and to take exception separately and severally to certain portions of the Intermediate Report, filed herein by William Seagle, Trial Examiner, which Intermediate Report was served on this respondent on January 25th, 1938, and further desiring to take exception to certain portions of the record, including exceptions to certain rulings of the Trial Examiner upon motions or objections as hereinafter specifically set forth, and files this its statement in writing with the National Labor Relations Board setting forth such exceptions in all respects as provided by Section 34 of Article II of the Rules and Regulations, Series 1, as amended, of the National Labor Relations Board, such exceptions being filed separately and severally as follows:

1. This respondent excepts to the ruling of the Trial Examiner found on page 841 of the Record in which the Trial Examiner denied, as to all of the grounds stated, the motion of the respondent (R., pp. 839-841) that the complaint as last amended be dismissed, which motion was in words and figures as follows:

"Now comes the Waterman Steamship Corporation, the respondent in the above styled cause, and all the evidence having been introduced and all parties having rested and the evidence showing without dispute that the Waterman Steamship Corporation, under its contract with the International Seamen's Union of America, an affiliate of the American Federation of Labor, has employed on its ships
149 members of the said International Seamen's Union of America, and the record further disclosing without controversy that the Waterman Steamship Corporation, during the existence of its contract with the said International Seamen's Union of America, has never been delayed in any manner whatsoever in the sailing of any of its large fleet of vessels, and the National Labor Relations Act, under which this proceeding is instituted, being termed "An Act to diminish the causes of labor disputes burdening or obstructing interstate or foreign commerce, etc," and it now appearing conclusively from the evidence that neither interstate nor foreign commerce has ever been in any manner burdened or obstructed by the action of the Waterman Steamship Corporation, the respondent, now complained of, the said Waterman Steamship Corporation now moves that the complaint as last amended filed against it in this proceeding, be dismissed on the following separate and several grounds:

"1. For that the evidence fails to show that the respondent has been guilty of any violation of the National Labor Relations Act.

"2. For that the evidence fails to show that the respondent has been guilty of any unfair labor practices as defined in the National Labor Relations Act.

"3. For that the evidence fails to show that the respondent has interfered with, restrained, or coerced employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

"4. For that the evidence fails to show that the respondent has by discrimination in regard to hire or tenure of employment or any term or condition of employment encouraged or discouraged membership in any labor organization.

"5. For that the evidence shows that the respondent, at all times mentioned in the complaint, was bound by a contract recognized as valid by the National Labor Relations Act to give preference of employment to members of the International Seamen's Union.

"6. For that the evidence shows that the refusal of the respondent to grant passes on board its ships to organizers of the National Maritime Union did not have the effect of interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act."

2. This respondent excepts to the Intermediate Report of the Trial Examiner and separately and severally to each finding of fact and separately and severally to each conclusion and recommendation contained therein.

3. This respondent excepts to the conclusions of the Trial Examiner contained in Paragraph 1 of his "Conclusions and Recommendations," found on pages 46-47 of the Intermediate Report, which Paragraph 1 is as follows:

"1. Respondent, through its officers and agents, by laying off on July 5 and 6, 1937, respectively, the employees whose names are listed in Appendix A, being members of the crew of the "Fairland," and the employees whose names are listed in Appendix B, being members of the crew of the Bienville, and by discharging E. J. Pelletier, listed in Appendix B, on July 6, 1937, and by refusing employment to the said employees since these dates for the reason that the said employees joined and assisted a labor organization known as the National Maritime Union of America and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection, except that H. Bowen, F. Bodden, W. R. Gold, E. X. Rhone, Bennett Baptiste, H. Hall, B. H. Ingram, W. Reynolds, and Lewis Jones have been reinstated in the employ of the respondent upon renouncing their membership in the National Maritime Union of America, and rejoining the International Seamen's Union of America, has discouraged membership in the labor organization known as the National Maritime Union of America and encouraged membership in the labor organization known as the International Seamen's Union of America, and has thereby

engaged in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7) of the National Labor Relations Act."

4. This respondent excepts to the conclusions of the Trial Examiner contained in Paragraph 2 of his "Conclusions and Recommendations," found on page 47 of the Intermediate Report, which Paragraph 2, is as follows:

"2. Respondent, through its officers and agents, by discharging on July 14, 1937, C. J. O'Connor, of the "Azalea City," and by refusing employment to the said C. J. O'Connor since this date for the reason that the said employee joined and assisted a labor organization known as Marine Engineers' Beneficial Association and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection, has discouraged membership in the labor organization known as the Marine Engineers' Beneficial Association, and has thereby engaged in an unfair labor practice affecting commerce within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7) of the National Labor Relations Act."

5. This respondent excepts to the conclusions of the Trial Examiner contained in Paragraph 3 of his "Conclusions and Recommendations," found on pages 47–48 of the Intermediate Report, which Paragraph 3 is as follows:

"3. Respondent, by granting passes to board its ships to representatives of the International Seamen's Union of America in the past, and by continuing to grant such passes to representatives of the Seamen's Reorganization Committee while at the same time refusing to issue passes for the same purpose and under the same conditions to representatives of the National Maritime Union of America, has interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the National Labor Relations Act."

6. This respondent excepts to the recommendation of the Trial Examiner contained in Paragraph 1 (a) of his "Conclusions
151 and Recommendations," found on page 48 of the Intermediate Report, which recommendation is that the respondent cease and desist from:

"(a) Interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

7. This respondent excepts to the recommendation of the Trial Examiner contained in Paragraph 1 (b) of his "Conclusions and Recommendations," found on page 48 of the Intermediate Report, which recommendation is that the respondent cease and desist from:

"(b) Discouraging membership in the National Maritime Union of America, the Marine Engineers' Beneficial Association, or any

other labor organization of its employees, or encouraging membership in the International Seamen's Union of America, its successors, the Seamen's Reorganization Committee, or any other labor organization of its employees by laying off, discharging, or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of their employment because of membership or activity in connection with any such labor organization."

8. This respondent excepts to the recommendation of the Trial Examiner contained in Paragraph 1 (c) of his "Conclusions and Recommendations," found on page 48 of the Intermediate Report, which recommendation is that respondent cease and desist from:

"(c) Urging, persuading, warning, or coercing its employees to join the International Seamen's Union of America, its successor, the Seamen's Reorganization Committee, or any other labor organization of its employees, or threatening them with discharge if they fail to join any such labor organization."

9. This respondent excepts to the recommendation of the Trial Examiner contained in Paragraph 1 (d) of his "Conclusions and Recommendations," found on page 48 of the Intermediate Report, which recommendation is that respondent cease and desist from:

"(d) Refusing to issue passes to board its ships to representatives of the National Maritime Union of America under the same terms and conditions as such passes are issued to representatives of the Seamen's Reorganization Committee."

152 10. This respondent excepts to the recommendation of the Trial Examiner contained in Paragraph 2 (a) of his "Conclusions and Recommendations," found on pages 48–49 of the Intermediate Report, which recommendation is that the respondent take the following affirmative action:

"(a) Offer to C. J. O'Connor and to the employees whose names are listed in Appendix A and Appendix B, with the exception of H. Bowen, F. Bodden, W. R. Gold, E. X. Rhone, Bennett Baptiste, H. Hall, B. H. Ingram, W. Reynolds, Lewis Jones, J. E. Gilroy, and M. E. Jones, immediate and full reinstatement to their former positions without prejudice to their seniority or other rights and privileges."

11. This respondent excepts to the recommendation of the Trial Examiner contained in Paragraph 2 (b) of his "Conclusions and Recommendations," found on page 49 of the Intermediate Report, which recommendation is that the respondent take the following affirmative action:

"(b) Make whole C. J. O'Connor, and the employees whose names are listed in Appendix A and Appendix B for any loss of pay they may have suffered by reason of their lay-offs, discharges, and subsequent refusals to reemploy, by payment to each of them of a sum equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, less the amount earned by him during such period."

12. This respondent excepts to the recommendation of the Trial Examiner contained in Paragraph 2 (c) of his "Conclusions and Recommendations," found on page 49 of the Intermediate Report, which recommendation is that the respondent take the following affirmative action:

"(c) Post immediately notices to the members of its crews upon its docks in ports in the United States at which its vessels touch, and upon its vessels, stating (1) that the respondent will cease and desist in the manner aforesaid; (2) that in order to continue employment upon its vessels the members of its crews need not become or remain members of the Seamen's Reorganization Committee; (3) that the respondent will not discharge or in any manner discriminate against members of the National Maritime Union of America, or any other labor organization of its employees, who may be employed upon its vessels, or any person assisting such organizations by reason of such membership or assistance; (4) that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting."

13. This respondent excepts to the recommendation of the Trial Examiner contained in Paragraph 2 (d) of his "Conclusions and Recommendations," found on page 49 of the Intermediate Report,
153 which recommendation is that the respondent take the following affirmative action:

"(d) Notify the Regional Director for the Fifteenth Region in writing within ten (10) days from the date of the service of this report what steps the respondent has taken to comply with its recommendations."

14. This respondent excepts to the recommendation of the Trial Examiner contained in Paragraph 4 of his "Conclusions and Recommendations," found on pages 49–50 of the Intermediate Report, which recommendation is as follows:

"4. It is finally recommended that unless the respondent notifies the said Regional Director in writing, within ten days of the service of this report that it will comply with the foregoing recommendations, the matter be referred forthwith to the National Labor Relations Board, and that said Board issue an order requiring respondent to take the action aforesaid."

15. This respondent excepts to that part of the Intermediate Report contained on Page 3 thereof, in which the Trial Examiner states that respondent alleged in its answer that it was bound to refuse to employ any persons who were not members of the International Seamen's Union of America.

16. This respondent excepts to that part of the Intermediate Report contained on Page 4 thereof, in which the Trial Examiner states that full opportunity to be heard, to cross-examine witnesses, and to produce evidence bearing upon the issues, was afforded to the parties, this exception being based on the rulings of the Trial Examiner hereinafter referred to rejecting certain testimony offered by respondent.

17. This respondent excepts to the Findings of Fact by the Trial Examiner relative to the alleged discriminatory discharges (R., pp. 7–43).

18. This respondent excepts to the Findings of Fact by the Trial Examiner relative to the refusal to issue passes to National Maritime Union representatives (R., pp. 43–45).

19. The respondent excepts to the Findings of Fact by the Trial Examiner relative to the effect of the alleged unfair labor practices upon commerce (R., pp. 45–46).

20. This respondent excepts to that part of the Intermediate
154 Report contained on Page 8 thereof, in which the Trial Examiner finds as a fact that three members of the "Fairland" crew who did not join the N. M. U. apparently quit of their own accord.

21. This respondent excepts to that part of the Intermediate Report contained on Page 8 thereof, in which the Trial Examiner finds as a fact that employment was refused on the "Fairland" and "Bienville" as well as on any other ships of the Waterman Line to such members of the crews who had joined and remained members of the N. M. U.

22. This respondent excepts to that part of the Intermediate Report contained on Page 10 thereof, in which the Trial Examiner finds as a fact that the provision in the contract between the Waterman Steamship Corporation and the I. S. U. providing: "It is understood and agreed that, as vacancies occur, members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the respective positions; provided, however, that this section shall not be construed to require the discharge of any employee who may not desire to join the union, or to apply to prompt reshipment, or absence due to illness or accident," was, in itself, sufficient to dispose of the respondent's contention that the crews were automatically discharged at the termination of the voyages of the "Bienville" and the "Fairland."

23. This respondent excepts to that part of the Intermediate Report contained on Pages 10 and 11 thereof, in which the Trial Examiner found, in effect, that the employment of the employees therein referred to was of a continuous nature.

24. This respondent excepts to that part of the Intermediate Report contained on Page 10 thereof, in which the Trial Examiner finds that the position taken by respondent relative to the term of employment was inconsistent with the mere existence of the contract of March 9th, 1937, which the Trial Examiner states is based upon the assumption of continuity of employment.

155 25. This respondent excepts to that part of the Intermediate Report contained on Page 10 thereof, in which the Trial Examiner finds that the position taken by the respondent relative to the term of the contract of employment is based upon alleged unjustified interpretation of the shipping articles themselves.

26. This respondent excepts to that part of the Intermediate Report contained on Page 10 thereof, in which the Trial Examiner makes the

following Finding of Fact: "Shipping articles are required by Federal Statute in order to protect the seamen against overreaching, but they do not exhaust the whole relationship between shipper and crew."

27. This respondent excepts to that part of the Intermediate Report contained on Page 10 thereof, in which the Trial Examiner makes the following Finding of Fact: "A shipping company may have in addition rules and regulations which exist quite independently of the articles and may govern the terms and conditions of a seaman's employment not only in port but at sea, and evidence of the existence of such rules and regulations is available in the present case."

28. This respondent excepts to that part of the Intermediate Report contained on Pages 10 and 11 thereof, in which the Trial Examiner makes the following Finding of Fact: "The crew on a vessel is required, for instance, to stand watch while the vessel is in port, although the members of the crew have signed off the articles."

29. This respondent excepts to that part of the Intermediate Report contained on Page 11 thereof, in which the Trial Examiner makes the following Finding of Fact: "The crew in signing off the articles merely releases the shipper from any claim for wages, as is expressly shown by the language of the releases contained in the shipping articles of the 'Bienville' and the 'Fairland'."

30. This respondent excepts to that part of the Intermediate Report contained on Page 11 thereof, in which the Trial Examiner
156 makes the following Finding of Fact: "As a matter of fact, the signing of article is not required by the United States shipping laws when vessels sail from an American port to the West Indies, to which many Waterman ships sail. Thus, although articles were signed for the 'Fairland,' which was bound for Puerto Rico, they were not really necessary and might have been dispensed with."

31. This respondent excepts to that part of the Intermediate Report contained on Page 11 thereof, in which the Trial Examiner makes the following Finding of Fact: "There is testimony which indicates that where the terms of articles have not expired, crews are sometimes reshipped without the signing of new articles, and that this may be done not only in coastal but in foreign trade (R. 49)."

32. This respondent excepts to that part of the Intermediate Report contained on Page 11 thereof, in which the Trial Examiner makes the following Finding of Fact: "The articles of both the 'Bienville' and the 'Fairland' are for a term of 12 months, and it is highly significant that in the case of the 'Fairland' the articles themselves expressly provide that the vessel might ply between Mobile, Alabama, and Puerto Rico 'and such other ports and places *including the same* in any part of the world as the Master may direct * * *' [Italics mine]. Thus the "Fairland" might have made any number of voyages between the same ports which could be completed within a 12-month period."

33. This respondent excepts to that part of the Intermediate Report contained on Pages 11 and 12 thereof, in which the Trial Examiner

makes the following Finding of Fact: "It is true that, once the crew signs off the articles, they are at liberty to quit the ship. But the situation here is no different than that which exists in any industrial plant on land where men are employed by the hour, or even at a piece work basis. The fact that they may quit at any time does not make their service any the less continuous, or entitle the employer to lay them off under circumstances which would constitute discrimination under the Act."

157 34. This respondent excepts to that part of the Intermediate Report contained on Page 12 thereof, in which the Trial Examiner makes the following Finding of Fact: "This question may be considered upon two assumptions: (1) That the dry docking or repair of the ships was arranged at the time solely for the purpose of making it possible to lay off the crews because they had joined the N. M. U. before they came into port; (2) that the dry docking or repairs for the periods during which the ships were out of commission occurred in the normal course of the operation of the ships but that advantage was nevertheless taken of the situation to get rid of the crews, so that it would be unnecessary to ship them again."

35. This respondent excepts to that part of the Intermediate Report contained on Pages 12 and 13 thereof, in which the Trial Examiner makes the following Finding of Fact: "The fact that the crews of both vessels were laid off without exception is in itself sufficient to establish that the officers of the respondent were determined to employ them no longer, or at least not until they renounced their membership in the N. M. U."

36. This respondent excepts to that part of the Intermediate Report contained on Page 13 thereof, in which the Trial Examiner makes the following Finding of Fact: "But there can hardly be any doubt that the practice of the maritime industry is to retain the crew if at all possible, and that the dismissal of a crew in toto, even when a ship is laid up for repairs for a period of a few weeks, is so rare as to be almost unheard of. The reason for this is obvious: the captain of a vessel would naturally prefer a crew accustomed to his vessel and experienced in its operation."

37. This respondent excepts to that part of the Intermediate Report contained on Page 14 thereof, in which the Trial Examiner makes the following Finding of Fact: "What happened when the 'Bienville' and 'Fairland' came into the port of Mobile was indeed so contrary to all recognized maritime usage that the crews were hopelessly confused."

38. This respondent excepts to that part of the Intermediate Report contained on Pages 14 and 15 thereof, in which
158 the Trial Examiner makes the following Finding of Fact: "That the members of the 'Bienville' and 'Fairland' crews were capable of doing a great deal of the work which was performed on these ships in drydock is not only admitted by respondent's witnesses but is manifest from the fact that a good many of them were actually employed on the ships while they were undergoing repairs."

39. This respondent excepts to that part of the Intermediate Report contained on Page 15 thereof, in which the Trial Examiner makes the following Finding of Fact: "The respondent thus attempted to seize the opportunity, which resulted from the contact of its officers with the shore gang, to make them surrender their N. M. U. books."

40. This respondent excepts to that part of the Intermediate Report contained on Page 18 thereof, in which the Trial Examiner makes the following Finding of Fact: "The animus of the respondent's officers against Pelletier was undoubtedly inspired by the fact that he had not only not prevented the stewards from joining the N. M. U. but had joined himself."

41. This respondent excepts to that part of the Intermediate Report contained on Page 18 thereof, in which the Trial Examiner makes the following Finding of Fact: "On a vessel as large as the 'Bienville' it was necessary to keep the chief steward at least, even though the vessel was being laid up for repairs, and on the very same day that Pelletier was discharged he was replaced by the chief steward from another vessel."

42. This respondent excepts to that part of the Intermediate Report contained on Page 18 thereof, in which the Trial Examiner makes the following Finding of Fact: "Nothing could better illustrate the determination of the respondent's officers to dismiss the crews of the two vessels because they had changed unions in mid-voyage."

43. This respondent excepts to that part of the Intermediate Report contained on Page 18 thereof, in which the Trial Exam-
159 iner makes the following Finding of Fact: "The facts already related are sufficient to establish the discriminatory character of their discharges."

44. This respondent excepts to that part of the Intermediate Report contained on Page 18 thereof, in which the Trial Examiner makes the following Finding of Fact: "But the evidence also justifies the assumption that the 'Bienville' and 'Fairland' were laid up for repairs when they were, in order to be able to lay off the crews."

45. This respondent excepts to that part of the Intermediate Report contained on Page 18 thereof, in which the Trial Examiner makes the following Finding of Fact: "If the evidence with respect to one of the vessels indicates clearly that it was docked because of what had happened on its voyage, it is a certainty that the same is true with respect to the other, for the plan obviously represented a common design."

46. This respondent excepts to that part of the Intermediate Report contained on Page 19 thereof, in which the Trial Examiner makes the following Finding of Fact: "Captain Nicolson was very evasive and contradictory in his testimony, and showed less than strict regard for the truth."

47. This respondent excepts to that part of the Intermediate Report contained on Page 19 thereof, in which the Trial Examiner

makes the following Finding of Fact: "They contradicted each other on such vital points that the inescapable conclusion is that there was something they were trying to conceal."

49. This respondent excepts to that part of the Intermediate Report contained on Page 20 thereof, in which the Trial Examiner makes the following Finding of Fact: "It will be observed from the foregoing testimony that the parties seemed indisposed to commit rather important positions to writing."

49. This respondent excepts to that part of the Intermediate Report contained on Pages 24 and 25 thereof, in which the Trial Examiner makes the following Finding of Fact: "By hiring its crews
160 exclusively through the I. S. U. hall, a course of dealing which was not required by the contract, they had converted it from a preferential to a closed shop. The practice of hiring only through the Union hall did not exist from the beginning but was put into effect some time later, a fact which indicates clearly that it was not necessary under the contract and was instituted voluntarily."

50. This respondent excepts to that part of the Intermediate Report contained on Page 25 thereof, in which the Trial Examiner makes the following Finding of Fact: "Moreover, when the occasion warranted it, and it was to the respondent's interest, they did not hesitate to disregard the contract. This is shown alone by an incident relating to a ship called the 'New Yorker,' which the respondent acquired in Oregon, changing its name to the 'Pan-Kraft.'"

51. This respondent excepts to that part of the Intermediate Report contained on Page 25 thereof, in which the Trial Examiner makes the following Finding of Fact: "At least as far as the Port of Mobile is concerned, the Waterman line officers never hired any but I. S. U. men, even when the I. S. U. hall could not supply them with full crews, in which case they were clearly entitled under the contract to look elsewhere."

52. This respondent excepts to that part of the Intermediate Report contained on Page 25 thereof, in which the Trial Examiner makes the following Finding of Fact: "It is important to realize that the respondent's officers had a strong preference for the I S. U. and were indeed determined to keep the N. M. U. off its ships, as is also shown by its refusal to issue passes to delegates of this union, a subject that will be discussed below."

53. This respondent excepts to that part of the Intermediate Report contained on Pages 25 and 26 thereof, in which the Trial Examiner makes the following Finding of Fact: "If the same crews were allowed to sail on the vessels the defection might become wide-
161 spread and extend to other vessels of the line with the result that the N. M. U. might be able to organize its crews, a result that the respondent's officers were undoubtedly determined to prevent."

54. This respondent excepts to that part of the Intermediate Report contained on Page 26 thereof, in which the Trial Examiner

makes the following Finding of Fact: "If they were of a kind that had to be made at that particular time there could be no suggestion of any conspiracy. The evidence indicates, however, without any doubt, that both vessels were perfectly seaworthy at the time and that the repairs done were largely of a structural character."

55. This respondent excepts to that part of the Intermediate Report contained on Page 28 thereof, in which the Trial Examiner makes the following Finding of Fact: "The testimony of the latter (Capt. Norvelle), moreover, is particularly revealing because it shows that the original plan was to dry dock the vessel only, and not to make any repairs."

56. This respondent excepts to that part of the Intermediate Report contained on Page 30 thereof, in which the Trial Examiner makes the following Finding of Fact: "Ingram, the assistant port engineer, tried to come to the rescue of Captain Nicolson but it cannot be said that he had much success. It is only necessary to read his testimony (R. 579–81)."

57. This respondent excepts to that part of the Intermediate Report contained on Page 34 thereof, in which the Trial Examiner makes the following Finding of Fact: "Following Captain Nicolson's testimony, witnesses for the respondent made heroic efforts to explain the situation."

58. This respondent excepts to that part of the Intermediate Report contained on Page 36 thereof, in which the Trial Examiner makes the following Finding of Fact: "This haste was undoubtedly inspired by the desire to get rid of the crew."

59. This respondent excepts to that part of the Intermediate Report contained on Page 36 thereof, in which the Trial Examiner
162 makes the following Finding of Fact: "Since the respondent's officers arranged to lay up the ships purposely, they can hardly interpose the I. S. U. contract as a defense."

60. This respondent excepts to that part of the Intermediate Report contained on Page 37 thereof, in which the Trial Examiner makes the following Finding of Fact: "Now, in the first place, it is manifest that the term (prompt reshipment) refers not to the period within which a vessel arrives and departs, but to the period within which the crew re-signs the articles, and hence reships."

61. This respondent excepts to that part of the Intermediate Report contained on Page 37 thereof, in which the Trial Examiner makes the following Finding of Fact: "The witnesses, who, relying on the dictionary meaning of prompt, testified that a prompt reshipment was one in which the vessel reshipped within 48 hours or so were really stating a palpable absurdity. The loading of a vessel takes an average of several days, and may take as much as five or six."

62. This respondent excepts to that part of the Intermediate Report contained on Page 37 thereof, in which the Trial Examiner makes the following Finding of Fact: "The testimony also shows that it is not maritime practice to have the crew sign the articles when the

ship docks, but a day or so before it is ready to ship again. Thus in the average case five or six days would frequently elapse before the crew was reshipped in the proper sense of resigning the articles."

63. This respondent excepts to that part of the Intermediate Report contained on Page 38 thereof, in which the Trial Examiner makes the following Finding of Fact: "Approximately the same time elapsed in the case of the 'Fairland.' It was in dry dock for not more than 30 hours, and spent at least a day at the loading berth. The whole time the vessel spent in port was *was* not much longer, if at all, then the time spent on a vessel not undergoing repairs."

64. This respondent excepts to that part of the Intermediate
163 Report contained on Page 38 thereof, in which the Trial Examiner makes the following Finding of Fact: "Certainly in the case of the 'Fairland' there was 'prompt reshipment,' and the respondent cannot interpose the defense of the I. S. U. contract."

65. This respondent excepts to that part of the Intermediate Report contained on Page 38 thereof, in which the Trial Examiner makes the following Finding of Fact: "Everything considered, the same conclusion is justified with respect to the 'Bienville'."

66. This respondent excepts to that part of the Intermediate Report contained on Page 38 thereof, in which the Trial Examiner makes the following Finding of Fact: "Although lately the respondent's officers have been treating the I. S. U. contract as establishing a closed shop, when the contract was made, they were careful to reserve to themselves the right to maintain existing crews irrespective of their union affiliation, and for obviously good reasons, and it is in the light of the situation when the contract was first made that it must be interpreted."

67. This respondent excepts to that part of the Intermediate Report contained on Page 38 thereof, in which the Trial Examiner announces the following conclusion of law: "A preferential agreement, which is contrary to the general principles upon which the National Labor Relations Act is founded, must be strictly construed."

68. This respondent excepts to that part of the Intermediate Report contained on Page 38 thereof, in which the Trial Examiner makes the following Finding of Fact: "Considered with reference to the purpose for which the prompt reshipment clause was inserted, it can be stated to be the establishment of a policy of continuity of employment. Hence the contract must be taken to justify the reshipping of a different crew only when a vessel is laid up for an indefinite period of time."

69. This respondent excepts to that part of the Intermediate Report contained on Pages 38 and 39 thereof, in which the Trial Ex-
164 aminer makes the following Finding of Fact: "There is a good deal of evidence in the record which indicates indeed that the respondent's officers had far from full confidence in the interpretation of the contract which was urged upon them. It will be recalled that Ross had to renew his threats when the vessels were about to be reshipped."

70. This respondent excepts to that part of the Intermediate Report contained on Page 39 thereof, in which the Trial Examiner makes the following Finding of Fact: "It will be recalled also that while a good many of the members of the 'Bienville' and 'Fairland' crews were working on the vessels as members of the shore gang, an effort was made to get them to renounce the N. M. U. so that they could sail their ships again."

71. This respondent excepts to that part of the Intermediate Report contained on Page 39 thereof, in which the Trial Examiner makes the following Finding of Fact: "The hesitation and vacillation thus displayed by the respondent's officers show that they were doubtful as to what course it was permissible for them to pursue in view of the I. S. U. contract."

72. This respondent excepts to that part of the Intermediate Report contained on Page 39 thereof, in which the Trial Examiner makes the following Finding of Fact: "The testimony shows that all the members of the 'Bienville' crew, with the exception of Pelletier, joined the N. M. U. and were laid off and refused reinstatement for that reason alone."

73. This respondent excepts to that part of the Intermediate Report contained on Page 40 thereof, in which the Trial Examiner makes the following Finding of Fact: "The employees whose names are listed in Appendix A, attached hereto and made a part hereof, being members of the crew of the 'Fairland,' and the employees whose names are listed in Appendix B, attached hereto and made a part hereof, being members of the crew of the 'Bienville,' were laid off by agents of the respondent on July 5 and July 6, 1937, respectively, with the exception of E. J. Pelletier, who was discharged by an officer and agent of the respondent on July 6, 1937, and have all since been refused employment by the respondent for the reason that the said employees joined and assisted a labor organization known as the National Maritime Union of America and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection, except that H. Bowen, F. Bodden, W. R. Gold, E. X. Rhone, Bennett Baptiste, H. Hall, B. H. Ingram, W. Reynolds, and Lewis Jones have been reinstated in the employ of the respondent upon renouncing their membership in the National Maritime Union of America, and rejoining the International Seamen's Union of America."

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74. This respondent excepts to that part of the Intermediate Report contained on Pages 40 and 41 thereof, in which the Trial Examiner makes the following Finding of Fact: "By the said termination of employment of the said employees, except as aforesaid, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and discouraged membership in the labor organization known as the National Maritime Union of America, and encouraged membership in the labor organization known as the International Seamen's Union of America."

75. This respondent excepts to that part of the Intermediate Report contained on Page 42 thereof, in which the Trial Examiner makes the following Finding of Fact: "Ingram asserted that he did not regard this as a sufficiently formal request, and indeed thought that O'Connor was joking. If he really thought so, the joke lay entirely in the fact that Ingram knew that the Waterman line had no intention of employing O'Connor because of the leadership he had taken in attempting to enforce the rights of the engineers under the M. E. B. A. contract. When he had told him (O'Connor) to take his vacation, he had really been engaged in getting rid of him for the same reason."

76. This respondent excepts to that part of the Intermediate
166 Report contained on Page 42 thereof, in which the Trial Examiner makes the following Finding of Fact: "Thus the said C. J. O'Connor was discharged by Ingram, an agent of the respondent, on July 14, 1937, and has since been refused employment by respondent for the reason that the said C. J. O'Connor joined and assisted a labor organization known as the Marine Engineers' Beneficial Association, and engaged in concerted activities for the purpose of collective bargaining and other mutual aid or protection."

77. This respondent excepts to that part of the Intermediate Report contained on Pages 42 and 43 thereof, in which the Trial Examiner makes the following Finding of Fact: "By the said discharge and refusal to employ said C. J. O'Connor, respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and discouraged membership in the labor organization known as the Marine Engineers' Beneficial Association."

78. This respondent excepts to that part of the Intermediate Report contained on Page 43 thereof, in which the Trial Examiner makes the following Finding of Fact: "The contract therefore can be no excuse for the denial of passes to N. M. U. representatives."

79. This respondent excepts to that part of the Intermediate Report contained on Page 45 thereof, in which the Trial Examiner makes the following Finding of Fact: "It may be that it is next to impossible to implement properly the type of instructions issued by the respondent's officers. But that only further demonstrates their futility, and points to the necessity of issuing passes to the N. M. U. as well as the I. S. U."

80. This respondent excepts to that part of the Intermediate Report contained on Page 45 thereof, in which the Trial Examiner makes the following Finding of Fact: "On the other hand, even if the instructions could be scrupulously enforced, the N. M. U. must still be deemed entitled to passes for the purposes of collecting dues.
167 It cannot be assumed that they have no members in the respondent's employ."

81. This respondent excepts to that part of the Intermediate Report contained on Page 45 thereof, in which the Trial Examiner makes the following Finding of Fact: "When a vessel is in port, it consti-

tutes not only the place where the crew works but also its living quarters, and for this reason the exclusion of the representatives of one union while another is permitted access is a discrimination in favor of the one as against the other union."

82. This respondent excepts to that part of the Intermediate Report contained on Page 45 thereof, in which the Trial Examiner makes the following Finding of Fact: "The respondent, by granting passes to board its ships to representatives of the I. S. U. in the past, and continuing to grant such passes to representatives of the S. R. C. while at the same time refusing to issue passes for the same purpose and under the same conditions to representatives of the N. M. U., has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act."

83. This respondent excepts to that part of the Intermediate Report contained on Page 46 thereof, in which the Trial Examiner makes the following Finding of Fact: "In the winter of 1936 a strike in the Port of Mobile resulted in the tie-up of some of its vessels."

84. This respondent excepts to that part of the Intermediate Report contained on Page 46 thereof, in which the Trial Examiner makes the following Finding of Fact: "I find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section IV, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several states, and between the United States and foreign countries, and tend to lead and have led to labor disputes burdening and obstructing commerce and the free flow of commerce."

168 85. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, laid off employees whose names are listed in Appendix A of the Intermediate Report, being members of the crew of the "Fairland," for the reason that the said employees joined and assisted a labor organization known as the National Maritime Union of America.

86. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, laid off employees whose names are listed in Appendix A of the Intermediate Report, being members of the crew of the "Fairland," for the reason that said employees engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

87. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, laid off employees whose names are listed in Appendix B of the Intermediate Report, being members of the crew of the "Bienville," for the reason that the said employees joined and assisted a labor organization known as the National Maritime Union of America.

88. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, laid off employees whose names are listed in Appendix B of the Intermediate Report, being members of the crew of the "Bienville," for the reason that said employees engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

89. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the re-
169 spondent, through its officers and agents, refused employment to the employees whose names are listed in Appendix A, being members of the crew of the "Fairland," or any of them, since July 5th, 1937, for the reason that said employees joined and assisted a labor organization known as the National Maritime Union of America.

90. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, refused employment to the employees whose names are listed in Appendix B, being members of the crew of the "Bienville," or any of them, since July 6th, 1937, for the reason that said employees joined and assisted a labor organization known as the National Maritime Union of America.

91. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent through its officers and agents, refused employment to the employe whose names are listed in Appendix A, being members of the crew of the "Fairland," or any of them, since July 5th, 1937, for the reason that said employees engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

92. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, refused employment to the employees whose names are listed in Appendix B, being members of the crew of the "Bienville," or any of them, since July 6th, 1937, for the reason that said employees engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

93. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, discharged E. J. Pelletier for the reason that he joined and assisted a labor organization known as the National Maritime Union of America.

170 94. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, discharged E. J. Pelletier for the reason that he engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

95. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, by discrimination in regard to hire or

tenure of employment or any term or condition of employment of the employees whose names are listed in Appendix A of the Intermediate Report, being members of the crew of the "Fairland," has discouraged membership in the labor organization known as the National Maritime Union of America.

96. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, by discrimination in regard to hire or tenure of employment or any term or condition of employment of the employees whose names are listed in Appendix B of the Intermediate Report, being members of the crew of the "Bienville," has discouraged membership in the labor organization known as the National Maritime Union of America.

97. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, by discrimination in regard to hire or tenure of employment or any term or condition of employment of the employees whose names are listed in Appendix A of the Intermediate Report, being members of the crew of the "Fairland," has encouraged membership in the labor organization known as the International Seamen's Union of America.

171 98. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, by discrimination in regard to hire or tenure of employment or any term or condition of employment of the employees whose names are listed in Appendix B of the Intermediate Report, being members of the crew of the "Bienville," has encouraged membership in the labor organization known as the International Seamen's Union of America.

99. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act.

100. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, discharged C. J. O'Connor on July 14th, 1937, for the reason that he joined and assisted a labor organization known as Marine Engineers' Beneficial Association and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

101. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, refused employment to C. J. O'Connor since July 14th, 1937, for the reason that the said employee joined and assisted a labor organization known as Marine Engineers' Beneficial Association and engaged in concerted activities for the purpose of collective bargaining and other mutual aid and protection.

102. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent,

through its officers and agents, by any alleged action in regard to the hire or tenure of employment or any term or condition of em-
172 ployment of C. J. O'Connor, has discouraged membership in the labor organization known as Marine Engineers' Beneficial Association.

103. This respondent excepts to the conclusion and Finding of Fact of the Trial Examiner, in his Intermediate Report, that the respondent, through its officers and agents, by any alleged action in regard to the hire or tenure of employment or any term or condition of employment of C. J. O'Connor, has engaged in an unfair labor practice affecting commerce within the meaning of Section 8 (1) and (3) and Section 2 (6) and (7) of the National Labor Relations Act.

104. This respondent excepts to the action of the Trial Examiner in refusing to admit in evidence on motion of respondent affidavit of E. X. Rhone, marked for identification respondent's Exhibit No. 6, dated July 12th, 1937, setting forth the facts and circumstances showing the fraud practiced upon him by the representatives of the N. M. U. when he was induced to change over from the I. S. U. to the N. M. U. (R., p. 58), which affidavit was in words and figures as follows:

"STATE OF ALABAMA,

"*County of Mobile.*

"Before me, Alex T. Howard, a Notary Public in and for the said state and county, personally appeared E. X. Rhone, who is known to me, who being by me first duly sworn, upon his oath deposes and says that he has heretofore and for a long time been a member in good standing of the International Seamen's Union of America, associated with the Cooks & Stewards' Union, that as such he was lately a member of the crew of the Steamship 'Fairland,' that he was Chief Steward on said vessel and when said steamer arrived at the Port of Tampa, Florida, on her late voyage, he went ashore to attend to business and on his return to the vessel found that the crew had been approached by agents of the National Maritime Union and persuaded them to leave the I. S. U. and join said union so that affiant was the only member of the crew left not going over to said N. M. U.; that affiant found that the crew had been induced by various methods of intimidation to leave their union, and also by false and fraudulent representations such, for example, as a statement made to them that one Grange, of the I. S. U., had been unable to account for a large number of books of members of the union running into large sums of money, that some officers of the I. S. U. had defaulted with the money of the union, that the agent at Mobile, George Ernst, had left town, and by all sort of misrepresentations had induced the men to go over to the N. M. U.; and that it was under such circumstances of misrepresentation that affiant was induced also to go over to that union, which action he very much re-

grets and now wishes to return as a loyal member of the I. S. U. and promises that if reinstated he will in all respects be and remain loyal to them.

"(Signed) E. X. RHONE.

"Subscribed and sworn to before me this 12th day of July 1937.

"[SEAL] "(Signed) ALEX T. HOWARD,
"*Notary Public, Mobile County, Alabama.*"

173 105. This respondent excepts separately and severally as to each affidavit to the action of the Trial Examiner in refusing to admit in evidence the following affidavits: Affidavit of Reese H. Bryars, dated September 14th, 1937, and marked for identification respondent's Exhibit No. 1; affidavit of Werner Rudolph Gold, dated July 17th, 1937, and marked for identification respondent's Exhibit No. 2; affidavit of Bennett Baptiste, dated July 16th, 1937, and marked for identification respondent's Exhibit No. 3; affidavit of Herbert Hall, dated July 17th, 1937, and marked for identification respondent's Exhibit No. 4; affidavit of Jesse Scott, dated July 17th, 1937, and marked for identification respondent's Exhibit No. 5; affidavit of W. Reynolds, dated September 14th, 1937, and marked for identification respondent's Exhibit No. 7; affidavit of B. H. Ingram, dated August 26th, 1937, and marked for identification respondent's Exhibit No. 8; affidavit of Clarence Turner, dated September 24th, 1937, and marked for identification respondent's Exhibit No. 9; affidavit of Kenneth E. Graham, dated September 15th, 1937, and marked for identification respondent's Exhibit No. 10; affidavit of E. J. Pelletier, dated October 5th, 1937, and marked for identification respondent's Exhibit No. 11; affidavit of Howard Bowen, dated July 22nd, 1937, and marked for identification respondent's Exhibit No. 12; affidavit of Charles Perkins, Andrew Benion, and Columbus Anderson, all three in one affidavit, dated July 13th, 1937, and marked for identification respondent's Exhibit No. 13; all of which affidavits are somewhat similar to the above quoted affidavit of E. X. Rhone, and all of which affidavits set forth the facts and circumstances showing the fraud practiced upon the respective affiants by the representatives of the N. M. U. when the said respective affiants were induced to change over from the I. S. U. to the N. M. U. (R., pp. 58–59).

Respectfully submitted.

WATERMAN STEAMSHIP CORPORATION,
By (Signed) N. NICOLSON, *Executive Vice President.*
STEVENS, MCCORVEY, MCLEOD, GOODE & TURNER,
By (Signed) Gessner T. McCorvey,
GESSNER T. MCCORVEY, *Attorneys for Respondent.*
(Signed) C. A. L. Johnstone, Jr.
C. A. L. JOHNSTONE, Jr.

174 Before National Labor Relations Board, Washington, D. C.

Case No. C–375

[Title omitted.]

Notice of hearing

Please take notice that pursuant to authority vested in the National Labor Relations Board under an Act of Congress (49 Stat. 449) a hearing will be held before the National Labor Relations Board on Tuesday, March 8, 1938, at 10 o'clock noon, in Room 326, Shoreham Building, Fifteenth and H Streets NW., Washington, D. C., for the purpose of oral argument in the above entitled matter. Argument will be limited to one hour.

You may appear and be heard if you so desire.

Dated Washington, D. C., February 7, 1938.

(Sd.) Nathan Witt,
NATHAN WITT, *Secretary.*

175 [Copy]

Before National Labor Relations Board, Washington, D. C.

Case No. C–375

[Title omitted.]

Notice of advancement of hearing

Please take notice that the hearing previously scheduled in this matter for Tuesday, March 8, 1938, at 10 o'clock a. m., is hereby advanced to Thursday, March 3, 1938, at 2 o'clock p. m., at Room 326, Shoreham Building, 15th and H. Streets, NW., Washington, D. C.

Dated Washington, D. C., February 11, 1938.

[SEAL] (Sd.) Nathan Witt,
NATHAN WITT, *Secretary.*

176 Before the National Labor Relations Board

Case No. C–375

[Title omitted.]

Exceptions to the record and intermediate report

Comes now the Seamen's Reorganization Committee of the American Federation of Labor, successor to the International Seamen's Union, and excepts to the Record and Intermediate Report in the above captioned case, as follows:

Exceptions to the Record

1. Exception is taken generally to all of the rulings of the Trial Examiner at the hearing, as disclosed by the Record, at which objec-

tions as to the admissability or rejection of evidence were made and exceptions reserved by counsel for the intervenor.

2. Exception is taken specifically to the ruling of the Trial Examiner at the hearing in which he granted the motion for intervention, limiting the intervention, however, as follows:

"The motion for intervention is granted. The intervenor, however, will be limited in the conduct of its case to the issues raised by the existence of the alleged contract between the respondent and the intervenor" (R. 14).

in that such ruling is prejudicial to the intervenor in that it is contrary to the provisions of Section 10 of the National Labor Relations Act and in that if unreversed, may tend to deprive intervenor of certain rights without due process of law.

3. Exception is specifically taken to the refusal of the Trial Examiner to grant intervenor's motion to dismiss on the grounds stated (R. 841–842).

Exceptions to the Intermediate Report

1. Exception is taken generally to the Intermediate Report
177 filed herein in that the findings of fact and conclusions and recommendations contained therein are in the main erroneous, unfounded in fact, contrary to evidence in the case, and based on an arbitrary treatment of said evidence.

2. Exception is taken to the findings of fact contained on page 13 of the Intermediate Report that, "There can hardly be any doubt that the practice of the maritime industry is to retain the crew, if at all possible, and that the dismissal of a crew in toto, even when a ship is laid up for repairs for a period of a few weeks, is so rare as to be almost unheard of," as being contrary to the law and the evidence and true state of facts, and as constituting an erroneous conclusion of the Examiner unsupported by any facts.

3. Exception is taken to the findings of fact contained on page 24 et seq., of said Intermediate Report, that the officers of the company, by hiring crews exclusively through the I. S. U. Hall, a course of dealing which was not required by the contract, "had converted said contract from a preferential to a closed-shop contract"; and the implication that the practice of hiring through the union hall was constituted for an unlawful purpose, as being contrary to the law and the evidence and based on an arbitrary treatment of the evidence contained in the record.

4. Exception is taken to the finding contained on page 25 of said Intermediate Report that, "It is important to realize that the respondent's officers had a strong preference for the I. S. U. and were indeed determined to keep the N. M. U. off its ships * * *," as being entirely unsupported by the evidence and erroneous and based of mistaken conclusion of the Trial Examiner as to the true import of certain evidence in the record, and his disregard or misinterpre-

tation of all of the evidence in the record with respect to the rotation system of employment.

5. Exception is taken to the finding contained on page 26 of said Intermediate Report that, "Respondent's officers were undoubtedly determined to prevent" the N. M. U. from organizing the company's crews, a finding entirely unsupported by any evidence in the record and gratuitous, erroneous, and contrary to fact.

178 6. Exception is taken to the findings contained on pages 36–38 of said Intermediate Report concerning the meaning of the words "prompt reshipment" contained in the contract referred to, in that said findings are erroneous, contrary to the weight of the testimony in the record, and unsupported by any competent testimony and are wholly contrary to law.

7. Exception is taken to the findings contained on page 38 of said Intermediate Report that the respondent's officers have been treating the I. S. U. contract as establishing a closed shop, as being erroneous and unsupported by the evidence and based on an arbitrary treatment of the evidence.

8. Exception is taken to the finding contained on page 38 of said Intermediate Report that a preferential agreement is contrary to the general principles upon which the National Labor Relations Act is founded, as being erroneous in law.

9. Exception is taken to the findings contained on pages 40–41 of said Intermediate Report that respondent, in violation of law, has encouraged membership in the labor organization known as the International Seamen's Union of America, as being contrary to the law and the evidence, unsupported by any facts in the record, and based on an arbitrary treatment of the evidence.

10. Exception is taken to the finding contained on page 43 of said Intermediate Report "That it is quite characteristic of the respondent's officers that they have never attempted to ascertain whether the I. S. U. has ever taken out the insurance required under the contract," as being unsupported by the evidence and based on a distorted and arbitrary treatment of the testimony referred to, and a disregard of other uncontradicted testimony in the record.

11. Exception is taken to the finding contained on page 43 of said Intermediate Report that the contract can be no excuse for the denial of passes to N. M. U. representatives as being entirely unsupported by the evidence, erroneous in law and in fact, and gratuitous and based on an arbitrary treatment of the evidence.

179 12. Exception is taken to the finding contained on page 45 of said Intermediate Report that the respondent by granting passes only to representatives of the I. S. U. has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, is unsupported by the testimony, wholly erroneous in law and in fact, and based on an arbitrary treatment of the evidence.

13. Exception is taken severally and jointly to the conclusions of the Trial Examiner contained on pages 46–47; 48 of said Interme-

diate Report, in that said conclusions are erroneous in fact and in law, wholly unsupported by competent testimony in the record, wholly mistaken, and based entirely on an arbitrary treatment of the evidence in the case or a misconstruction of the meaning thereof, and are unsupported by any proof.

14. Exception is taken generally and specifically to each of the recommendations contained on pages 48–50 of said Intermediate Report, for that if said recommendations are adopted and made any part of an order of the National Labor Relations Board, any such order will, contrary to law, tend to interfere with the contractual relationship existing between respondent and intervenor, and operate to void or render inoperative certain provisions thereof, and to deprive intervenor of certain rights thereunder without due process of law.

Charlton Ogburn,
(Sd.) CHARLTON OGBURN,
Attorney for Seamen's Reorganization Committee,
Office & P. O. Address, 68 William Street, New York, New York.
ALEX HOWARD, Esq.,
415 Van Antwerp Building, Mobile, Alabama,
Of Counsel.

Subscribed and sworn to before me this 17th day February 1938.
MARY G. KITE,
Notary Public, D. C.
My commission expires August 10, 1939.

180 Before the National Labor Relations Board

Case No. C–375

[Title omitted.]

Appearances

ROOM 442, SHOREHAM BUILDING,
Washington, D. C.

A hearing was held in the above matter for the purpose of oral argument at the above place on March 8, 1938, at 2:00 P. M.

Before J. WARREN MADDEN, Chairman; EDWIN S. SMITH, Member.

Appearances: Daniel J. Harrington, of Counsel to the Board Gessner T. McCorvey, Respondent, Merchants National Bank Building, Mobile, Alabama. Max Lustig, of Counsel, National Maritime Union, William L. Standard, 291 Broadway, New York City, New York. Charlton Ogburn, Esquire, International Seamen's Union & Seamen's Reorganization Committee (A. F. L.), Washington, D. C.

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[Copy]

Before the National Labor Relations Board

Case No. C-375

[Title omitted.]

Order incorporating matters in the record as respondents exhibits for identification

Charges having been filed, a hearing having been held before a Trial Examiner duly designated, and thereafter at a hearing before the Board in Washington, D. C., for the purpose of oral argument the respondent having submitted to the Board certain affidavits, and the Board having considered the matter

It is hereby ordered that such affidavits be, and they hereby are, incorporated in the record as Respondent's Exhibits Nos. 1-43 for identification.

Dated Washington, D. C., May 13, 1938.

By direction of the Board.

[SEAL] (Sd.) NATHAN WITT,
Nathan Witt, *Secretary.*

182 Before the National Labor Relations Board

Case No. C-375

IN THE MATTER OF WATERMAN STEAMSHIP CORPORATION AND NATIONAL MARITIME UNION OF AMERICA, ENGINE DIVISION, MOBILE BRANCH, MOBILE, ALABAMA

Mr. Joseph A. Hoskins and Mr. Berdon M. Bell, for the Board. Stevens, McCorvey, McLeod, Goode & Turner, by Mr. Gessner T. McCorvey and Mr. C. A. L. Johnstone, Jr., of Mobile, Ala., for respondent. Mr. William L. Standard, of New York City, by Mr. Max Lustig, for the N. M. U. Mr. Alex Howard, of Mobile, Ala., for the S. R. C. Mr. Daniel J. Harrington, of counsel to the Board.

Decision and Order

Statement of the case

Upon charges and amended charges duly filed by the National Maritime Union of America, herein called the N. M. U., the National Labor Relations Board, herein called the Board, by the Regional Director for the Fifteenth Region (New Orleans, Louisiana), issued its complaint dated October 9, 1937, and an amended complaint dated October 20, 1937, against Waterman Steamship Corporation,
183 Mobile, Alabama, herein called the respondent. The complaint, amended complaint, and notices of hearing thereon were duly served upon the respondent and the N. M. U. The complaint,

as amended, alleged that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8, Subdivisions (1) and (3), and Section 2, subdivisions (6) and (7), of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

In respect to the unfair labor practices the complaint, as amended, alleged in substance that the respondent had discharged 47 employees and refused to reinstate them because of their membership and activities in the N. M. U. and that the respondent had at all times refused to grant to the duly authorized representatives of the N. M. U. passes, permitting such representatives to board ships of the respondent for the purpose of soliciting membership for the N. M. U., while said ships were docked at Mobile, Alabama, and at other ports.

On October 26, 1937, the respondent filed an answer to the amended complaint, stating in substance that the crews of the "Bienville" and the "Fairland" were employed to make a particular voyage; that when the "Bienville" arrived in Mobile all the members of the crew were laid off as it laid up for repairs; that when the "Fairland" arrived in Mobile it went on dry-dock and the members of the crew were discharged; that the contract of employment terminated, as is usual and customary in such cases, when the said vessels were laid up for repairs or went on dry-dock; that the respondent has in no manner refused to reinstate the said employees, except in conforming
184 with the terms of its preferential shop contract with the International Seamen's Union of America; that C. J. O'Connor voluntarily left the vessel of his own accord at the termination of the voyage; that John R. Roberts and Joseph R. McCoy were not employed by the respondent; that the respondent refused and still refuses to grant passes to duly authorized representatives of the N. M. U. permitting such representatives to board its ships; that the respondent insists on its right to determine who shall and who shall not enter on its privately owned property so long as no laws are violated; and that under its contract with the International Seamen's Union of America the respondent permits authorized representatives of that union to board its ships subject to regulations prescribed by the respondent. Thereafter the respondent filed an amendment to its answer correcting minor typographical errors.

Pursuant to notice, a hearing was held in Mobile, Alabama, on November 1, 2, 3, 4, and 5, 1937, before William Seagle, the Trial Examiner duly designated by the Board. The Board, the respondent, the N. M. U., and the Seamen's Reorganization Committee of the American Federation of Labor, herein called the S. R. C., were represented by counsel and participated in the hearing. The S. R. C. was permitted to intervene on issues raised by the existence of the contract between the respondent and the International Seamen's Union of America, herein called the I. S. U. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

185 During the course of the hearing the complaint was dismissed as to John R. Roberts, Joseph R. McCoy, and Reese Bryars, and was amended to state that C. J. O'Connor was discharged for joining and assisting a labor organization known as the Marine Engineers Beneficial Association, herein called the M. E. B. A. The respondent's answer was amended to meet the allegations of the complaint, as amended.

At the close of the hearing counsel for the Board moved that the pleadings be conformed to the proof. All parties made the same motion which was granted as to all the parties. Counsel for the respondent moved that the complaint be dismissed on the grounds that the evidence failed to show any violation of the Act by the respondent. The motion was denied. Counsel for the intervenor moved that the "matter" be dismissed as beyond the jurisdiction of the Board to impair the obligations of an existing contract under which the intervenor's rights had been fairly and legally established. The motion was denied.

Thereafter the Trial Examiner filed his Intermediate Report dated January 17, 1938, in which he found that the respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the Act. Both the respondent and the intervenor filed exceptions to the Intermediate Report.

On March 8, 1938, oral argument was had before the Board in Washington, District of Columbia, and a brief was submitted in support of respondent's exceptions to the Intermediate
186 Report. The Board, the respondent, the S. R. C., and the N. M. U. were represented by counsel and participated in the oral hearing.

Counsel for the respondent submitted at the hearing and again at the oral argument before the Board affidavits, signed by 13 members of the crews of the "Bienville" and the "Fairland," stating the affiants' reasons for leaving the I. S. U. At the hearing the Trial Examiner ruled that the affidavits were inadmissible, since the seamen's reasons for leaving the I. S. U. were not in issue in the case.

The Board has reviewed the rulings made by the Trial Examiner on motions and objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed. The Board has considered the exceptions to the Trial Examiner's rulings and Intermediate Report and finds them without merit.

Upon the entire record in the case, the Board makes the following:

Findings of fact

I. THE BUSINESS OF THE RESPONDENT

The respondent, Waterman Steamship Corporation, is a corporation organized on June 10, 1919, under the laws of the State of Ala-

bama. It has its principal office and place of business in Mobile, Alabama, and is engaged in the transportation of passengers and freight by steamship between foreign countries and the United States.

187 II. THE UNIONS

National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama, is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership the unlicensed personnel of the respondent's ships.

International Seamen's Union of America is a labor organization affiliated with the American Federation of Labor, admitting to membership all seamen in deck, engine, and steward's departments who are not required by the United States Bureau of Marine Inspection and Navigation to hold licenses.

Seamen's Reorganization Committee of the American Federation of Labor is the successor to the International Seamen's Union of America. It is a labor organization, admitting to membership the same classes of persons who are eligible to membership in the I. S. U.

The Marine Engineers Beneficial Association is a labor organization affiliated with the Committee for Industrial Organization, admitting to membership the licensed personnel of the respondent's ships.

III. THE UNFAIR LABOR PRACTICES

A. Refusal to issue passes

The respondent admits that it has refused to issue passes to authorized representatives of the N. M. U. to enable them to board its ships and states that it will continue to do so. The respondent, however, issues passes to I. S. U. representatives under the terms
188 of a contract between the I. S. U. and various steamship companies, including the respondent. Article II, Section 3, of the contract states that "authorized representatives of the Union shall have the right to go on board ships covered by this agreement, subject to regulations prescribed by the Owners, for the purpose of consulting with seamen employed thereon." Article II, Section 4, provides in substance that the I. S. U. shall take out insurance to protect the steamship owner against any claim for loss of life or injury occurring to a union representative while on board the ships and shall furnish satisfactory evidence of such insurance."

On July 12 and 13, 1937, respectively, the respondent notified the I. S. U. delegate at Mobile, Alabama, and the masters of its vessels that, in view of the fact that the Board was holding an election to determine whether the I. S. U. or the N. M. U. should represent the unlicensed personnel of its ships, representatives of neither union would be permitted on the ships for the purpose of soliciting mem-

bership. The I. S. U. delegate replied that passes issued to I. S. U. delegates had not been used for the purpose of soliciting membership and I. S. U. delegates continued to visit the respondent's ships. The evidence does not show that the respondent ever made any attempt to ascertain whether or not the I. S. U. was observing its instructions against solicitation.

On August 16, 1937, in an amendment [1] to the decision and supplemental decision in the Matter of American France Line, et al,[2]
189 the Board ordered that no preference should be shown to either of the unions involved by granting passes to representatives of one union while denying them to the other or by allowing representatives of either union to board vessels without passes. Thereafter, on September 24 or 25, 1937, an agent for the N. M. U. requested passes to go on board the respondent's ships from Nicholson, the respondent's Executive Vice President. Nicholson refused to accede to the request, basing his refusal on the contract with the I. S. U. and the fact that it would cause trouble on the respondent's ships. The N. M. U. protested this action to the Board's Regional Director for the Fifteenth Region, who requested the respondent to issue passes to N. M. U. agents and delegates in accordance with the Board's order. The respondent refused and still refuses to issue passes to the N. M. U. and states that even if the N. M. U. took out insurance on its representatives it would not issue them passes.

The respondent contends that, inasmuch as it has refused to permit representatives of either union to solicit memberships on board its ships, it has treated both unions alike. The facts do not support the respondent's assertion that similar treatment has been accorded both unions. As we have indicated, the I. S. U. representatives had access to the respondent's ships, while this privilege was denied to the N. M. U. The respondent's issuance of passes to the I. S. U. while denying them to the N. M. U. is obviously a discrimination in favor of the I. S. U. as against the N. M. U., which has the necessary effect of impeding its employees in the free choice of representatives.

We find that the respondent, by issuing passes to representa-
190 tives of the I. S. U. and refusing to grant such passes to representatives of the N. M. U. for the same purpose and under the same conditions, has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

B. The discharges

The "Bienville" and the "Fairland" were freight boats which also carried passengers. The "Bienville," with a crew of approximately 40, sailed between Mobile, Alabama, and various European ports, while the "Fairland," with a crew of approximately 30, sailed between Mobile and West Indian ports. The unlicensed personnel of

[1] 3 N. L. R. B., No. 45.
[2] 3 N. L. R. B., No. 7.

the "Bienville" unanimously decided in the course of a foreign voyage, which began in May of 1937, to change from the I. S. U. to the N. M. U. and were signed up in the N. M. U. by an N. M. U. organizer at Tampa, Florida, on July 2, 1937. The crew then sent the organizer to the "Fairland," which had just arrived in Tampa. All but three members of the unlicensed personnel of the "Fairland" joined the N. M. U.

The "Fairland" arrived in Mobile on July 5, and the "Bienville" arrived shortly before midnight of the same day. The schedules stops of the "Bienville" at Panama City, Pensacola, and Gulfport were canceled by the respondent. The crew of the "Fairland" signed off the articles on July 5, 1937, and the crew of the "Bienville" did so on July 6, 1937. When the crews signed off the articles, or shortly thereafter, the steam on the "Bienville" and the "Fairland" was killed and the entire crews were laid off.[3]

191 The "Bienville" was laid up for repairs from July 5 to August 1, 1937, while the "Fairland" was put in drydock for 30 hours, during which time it was inspected and its tail shaft was drawn in accordance with insurance and Bureau of Marine Inspection and Navigation regulations, respectively. It was then laid up in the ship yard for about 7 days for repairs. The respondent thereafter refused employment to those members of the crews who had joined and remained members of the N. M. U.

On July 8, 1937, some of the crews of the "Bienville" and the "Fairland" were put to work in the shore gang, comprising part of a gang of about 125 men, who were repairing the "Bienville." The respondent's witnesses testified that since their shops were open shops they were able to employ the members of the crews there without violating the I. S. U. contract. In this respect it is significant to note that on July 7, 1917, the day before these men were recalled to work on the shore gang, the Board's Regional Director for the Fifteenth Region sent a telegram to Nicholson, requesting him to reinstate all men to their former status and without discrimination pending the election. To this telegram Nicholson admits that he probably replied that under the terms of the I. S. U. contract he could not work N. M. U. men. Although a majority of the men started working in the shore gang on July 8, Nicholson denied that they were given such employment as a result of the telegram. However, Ingram, the respondent's Assistant Port Engineer, admitted that word was sent specially to the "Bienville" and "Fairland"

192 crews that work was available for them in the shore gang. After working on the "Bienville" repairs for 3 or 4 days, 10 members of the crews of the "Bienville" and the "Fairland" were laid off. There is credible testimony that there was still work with the shore gang that these men could have done, but they were not retained. Two members of the crews, who were laid off from the shore gang, stated that Ingram told them that they would have to

[3] There is conflicting testimony in the record as to whether the three members of the "Fairland" crew, who did not join the N. M. U., were laid off or quit of their own accord. In either case the sweeping character of the lay-off is not affected.

take off their N. M. U. buttons if they wanted to work for the respondent. Ingram's explanation is that he merely told them that they could not sail on the respondent's ships because of the contract with the I. S. U., but such an explanation obviously has no relation to their lay-off from the shore gang, since the latter work was admittedly not subject to the I. S. U. contract.

In defense to the alleged discriminatory discharge and refusal to reinstate the crews of the "Bienville" and the "Fairland," the respondent contends that the discharges were not discriminatory, since the employment of the crews terminated normally at the conclusion of their respective voyages, and that the contract between the respondent and the I. S. U. prevented the reemployment of the crews when the ships sailed. An analysis of this contention reveals that it is without merit.

The respondent asserts that the whole contract between itself and its crews is embodied in the shipping articles under which the crews sail and that the crews are completely discharged and the employer-employee relationship terminated at the end of each particular voyage. This assertion is inconsistent with the terms of the re-
193 spondent's contract with the I. S. U., Article II, Section 1 of which provides: "It is understood and agreed that, as vacancies occur, members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the respective positions; provided, however, that this Section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt reshipment, or absence due to illness or accident."

The quoted provision, which is the clause relevant to the issues raised here, clearly contemplates a continued employer-employee relationship and protects employees against discrimination by the respondent because of non-membership in the I. S. U. The respondent's assertion is also inconsistent with actual maritime practice as disclosed in the testimony of numerous witnesses, including the respondent's own witnesses, who testified, in effect, that the mere expiration of the shipping articles does not terminate the seamen's employment. Thus Norville, Captain of the "Fairland," testified that unless a man resigns or is discharged, he is given in opportunity to sign on again and that this is the general custom in the industry and on the respondent's ships. Nicholson testified that, if a crew is satisfactory to the officers on the vessel and desires to ship again, it is reshipped. Reed, the respondent's port captain, testified that even after the crew signs off the men stand their watches unless they voluntarily quit or are discharged for cause, which indicates the continuity of the employment.

It is clear from the record that the termination of a voyage does not terminate the employment of the crew in the absence of other circumstances. The respondent urges that there were such other circumstances, namely, the necessary extensive lay-ups of both ships.

While it is apparently true that repairs may have required that both ships be laid up, our consideration of the record convinces us
194 that the dates and duration of the particular lay-ups were arranged for the purpose of making it possible to discharge the crews because they had joined the N. M. U.

In the first place, the reasons and dates advanced by the respondent's officials for laying up the "Bienville" are self-contradictory. Nicholson testified that the respondent purchased steel in May 1937 for repairing the ship and made plans to repair it when it returned from Europe on July 5. He further testified that he knew in May that the ship was to be repaired in July and that the repairs would take 3 weeks. When confronted with a stipulation, submitted by the respondent on June 22, 1937, in the American France Line hearing,[4] which schedules the "Bienville" to be in Mobile only from July 11 to July 15, 1937, Nicholson admitted that the steel might have been ordered for the "Azalea City," a sister ship of the "Bienville." In an attempted explanation of this discrepancy between his testimony and the stipulation, he stated that due to a mix-up in schedule, or because it was more economical, the "Bienville" might have been substituted for the "Azalea City." Ingram testified that to the best of his knowledge it was decided to make the repairs which had previously been contemplated while the "Bienville" was on its return voyage from Europe some time in June. Reed, on the other hand, testified that as early as April 1937 the "Bienville" was scheduled to be laid up for repairs from July 7 to July 30. His information was based upon a sailing schedule entitled "Sailing Schedule April
195 thru August 1937." Reed didn't remember the other schedule set out in the aforementioned stipulation of June 22 and stated that if there had been a change in the April schedule he was sure that he would have been so advised. Thus three different responsible officials of the respondent, when called upon to explain the course of action which the respondent had followed, assigned conflicting dates for the lay-up of the "Bienville."

Comparable contradictions and vagueness are disclosed by the record in the explanations offered for the lay-up of the "Fairland." Insurance regulations required that the "Fairland" be drydocked every nine months, while regulations of the Bureau of Marine Inspection and Navigation required that the tail shaft be drawn every three years for inspection. The respondent introduced in evidence a schedule entitled "Inspection—Drydocking—Surveys," showing that the "Fairland," in accordance with these regulations, was due to have its tail shaft drawn on July 10, 1937, and to be drydocked for inspection on July 28, 1937. Reed testified that if the "Fairland" had gone on another trip after it docket at Mobile on July 5, 1937, it would not have returned in time to comply with the regulations. However, as we have indicated above, the "Fairland" was in drydock from July 5 for only 30 hours, during which period the tail shaft was drawn

[4] 3 N. L. R. B., No. 7.

and the insurance inspection, apparently scheduled for July 28, was completed. In explanation of the seven-day lay-up for repairs following the 30-hour drydocking, Nicholson testified that the "Fairland" arrived in Mobile during the July 4 holidays and that the steam
196 was "killed" and the crew laid off due to scarcity of business. Nicholson further testified that 3 or 4 months before the ship left Mobile on the voyage in question it was decided to clean and paint it. Ingram, on the other hand, stated that he did not have any plans to tie up the ship previous to the time it sailed in June, and that he was not positive as to whether the plans were formulated before or after the ship left Tampa on July 2 for Mobile. Although no schedule was introduced, Nicholson stated that the ship was behind schedule and that it was decided to eliminate one trip in order to put it back on schedule. Reed admitted that it was very unusual to set a ship back a trip to straighten its schedule.

In conjunction with the divergent and conflicting explanations of the dates and duration of the lay-ups, it is significant to note that the respondent stated that both vessels were seaworthy at the time repairs were made on them.

The respondent denied that it knew of the change in the labor affiliation of the crews of the "Bienville" and the "Fairland" until after the crews were discharged. We cannot credit this denial, because the respondent had at least constructive knowledge, and we believe actual knowledge, of the change when it occurred in Tampa. The captains of the respective vessels certainly knew of the occurrence immediately, while the boats were in Tampa. Norville, Captain of the "Fairland," denied that he had informed the respondent's higher officials of the occurrence before his boat reached Mobile. The Captain of the "Bienville" did not testify. However, the cancella-
197 tion of the schedules stops of the "Bienville" between Tampa and Mobile, which was never explained by the respondent, indicates that the respondent knew immediately or shortly thereafter that the crews of the two ships had joined the N. M. U. in Tampa. The evidence establishes that, if not informed by its own officers, the respondent probably knew of the shift as soon as the ships reached Mobile through information received from I. S. U. officials. Ross, Business Agent of the I. S. U., testified that the I. S. U. agent in Tampa notified him by telephone that the crew of the "Bienville" had changed to the N. M. U. and that when the ship arrived in Mobile he sent a delegate down to it and at that time made representations to the respondent about the change. Ross was unable to remember whether or not the agent at Tampa had notified him of the "Fairland's" crew joining the N. M. U.

Moreover, the fact that the ships were laid up for repairs would not of itself involve discharging the crews. There is abundant testimony in the record that crews have remained on ships for several weeks while the ships were undergoing repairs. Lowry, who had worked in a shipyard off and on for 11 years, testified that he had

seen approximately 600 ships in drydock and that the only ships he had seen come into drydock without crews are those which had come out of the laid-up fleet or had been laid up for an indefinite length of time and that they generally took on a crew while in drydock. The respondent's witnesses testified to the same effect. Thus Nicholson admitted that the respondent had kept a good part of the crew on when a ship was in for 7 days, and that it was not customary to lay off the entire crew. Norville testified that he had never heard
198 of another case where the entire crew had been laid off. Although Nicholson stated that it was impossible to house the crew on the "Bienville" while it was being repaired, due to the type of repairs and the lack of steam, this condition would not have necessitated the discharge of the crew. When there is no work for members of a crew they customarily stand by the ship, that is, wait until it is ready to sail again and then sail on it.

Nicholson claimed that the major part of the repairs on the "Bienville" could not be made by the crew, but admitted that the crew could have done some of the work. Indeed, as a matter of fact, some members of the "Bienville" and "Fairland" crews did work on the ship as members of the shore gang. It will be recalled that the respondent's first act was to discharge both crews immediately and that work on the shore gang was obtained for them only after the intervention of the Board's Regional Director. Nicholson stated that a large number of men were put to work on the ship and the number cut gradually from day to day. As has been already noted, however, the members of the N. M. U. were laid off after only 3 or 4 days' work and while there was still work that they could have done. Although Ingram stated that the work on the "Fairland" could not be done by the crew, he admitted that there is always work on a ship that can be done by members of the crew.

The above facts indicate that, even though the drydocking or repairs occurred in the normal course of operation of the ships,
199 advantage was taken of the situation to discharge the crews. When the ships sailed again, the respondent used its contract with the I. S. U. as a pretext for refusing to reship the crews.

Nicholson defined the term "prompt reshipment" in the I. S. U. contract as meaning signing on a crew within 24 to 36 hours after they are paid off. He testified that he was very familiar with the term and that it was commonly used in maritime circles, but on cross-examination admitted that he was giving his own private interpretation of it and that this contract was the only one in which he had ever seen the term used. The testimony of numerous other witnesses reveals a similar confusion as to the meaning of the term. Ships are in the port of Mobile loading and unloading on an average of from 2 to 4 days and in some cases for as many as 6 days. At times the crew does not sign on again until the ship is ready to sail. In the light of these facts it is apparent that the respondent seized on Nicholson's interpretation of the term as a justification for its un-

precedented conduct in discharging the crews of the two ships and refusing to reship them.

The circumstances surrounding the discharge of Edmund J. Pelletier confirm our opinion that the respondent decided to discharge the entire crews to discourage membership in the N. M. U. Pelletier first sailed for the respondent in 1934. He was chief steward and chief cook on the "Bienville" on the voyage in which the shift to the N. M. U. occurred and he joined the N. M. U. in Tampa with
200 the rest of the crew. When the ship docked in Mobile on July 5, Fagan, the Port Steward, went aboard and asked Pelletier if he and his crew had joined the N. M. U. Pelletier answered in the affirmative. In the afternoon Fagan sent a new steward to the ship and later came aboard himself and discharged Pelletier. Fagan testified that when the ship was ready to sail on the last voyage before Pelletier was discharged, Pelletier had asked for another mess boy, although he had previously assured Fagan that everything was satisfactory in the steward's department. Fagan also testified that, when he discharged Pelletier, he told him that he would have known that he lacked a mess boy, if he had had any discipline in his department. Fagan also claimed that Pelletier seemed unable to retain his men on another ship of the respondent's on which he was steward.

Pelletier's version of his discharge differs sharply from that of Fagan. He testified that on the morning of May 5, 1937, he asked Fagan for another mess boy in the presence of two I. S. U. delegates and that Fagan and one of the delegates asked one of the members of the steward's department to do the extra work. When the man offered to do so, Fagan asked Pelletier if that was satisfactory, to which Pelletier replied that it was "up to" the I. S. U. delegates. When the ship was ready to leave Mobile the crew refused to sail until Ingram, who was present, promised to have another mess boy put aboard at Tampa, which was done. Pelletier stated that after his conversation with Fagan and the I. S. U. delegates he never made another request for a mess boy.

201 As further proof of the incompetency of Pelletier, the respondent introduced in evidence a letter from the Captain of the Bienville to Reed, Port Captain of the respondent, stating, in effect, that Pelletier was incompetent. The letter, however, also stated that, if such service were given to passengers, the overtime in the steward's department would be substantial. In his testimony Reed interpreted this letter to mean that the steward's department had just enough personnel to give a minimum amount of service. Furthermore, Fagan admitted that there is always dissatisfaction in the steward's departments of ships and that he had received complaints about other ships on practically every trip. This is virtually the same condition that Pelletier faced. Fagan, however, did not discharge stewards on other ships because of such complaints.

Although the respondent contends that Pelletier was incompetent, he had received a promotion and an increase in pay, which went into effect at the time of his last voyage on the "Bienville."

After his discharge, the respondent refused to pay Pelletier his overtime, contending that it was too high. Pelletier sued for it and obtained a judgment. In October 1937, he offered to drop his overtime suit if the respondent would reemploy him. He was told that he would have to be reinstated in the I. S. U. first. He has since rejoined the I. S. U. and at the time of the hearing was awaiting his turn to be called to work.

The discharge of Pelletier illustrates the discriminatory nature of all the discharges. The reason advanced for laying off the rest of the crews would not suffice in his case, inasmuch as it was necessary to keep a steward on the "Bienville" to act as a watchman, even
202 though it was laid up for repairs. The very day that Pelletier was discharged, he was replaced by another steward. Since the respondent could not with good grace contend that he was laid off because the ship was being laid up for repairs, a reason for discharging him had to be sought. The reason given by the respondent cannot be credited in view of the facts set out above.

Some members of the "Bienville" and "Fairland" crews have renounced the N. M. U., rejoined the I. S. U., and have been given employment by the respondent. B. H. Ingram and W. Reynolds, of the "Bienville" crew were employed on ships of the respondent at the time of the hearing, as were W. Gold, H. Bowen, F. Bodden, E. X. Rhone, and B. Baptiste, of the "Fairland" crew. J. E. Gilroy and M. E. Jones, of the "Bienville" crew, and H. Hall, of the "Fairland" crew, have secured employment elsewhere.

To summarize, the haste with which the "Bienville" was hurried from Tampa to Mobile immediately after the crew's shift from the I. S. U. to the N. M. U., the almost simultaneous discharge of the crews and laying up of both ships after their arrival at Mobile, the failure to retain the crews on other work in accordance with custom, the reluctant and brief assignment of a few members of the crews to the shore gang, and finally the interpretation of the, at best, ambiguous I. S. U. contract against the interest of the employees in question, evidences the respondent's obvious desire to get rid of the employees who had become members of the N. M. U.

Under all the circumstances we find that, by laying off and
203 refusing to reinstate the employees whose names are listed in Appendix A, being members of the crew of the "Bienville," and the employees whose names are listed in Appendix B, being members of the crew of the "Fairland," the respondent has discriminated against them with respect to hire and tenure of employment, has discouraged membership in the N. M. U., and has thereby interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

C. J. O'Connor was Second Assistant Engineer on the "Azalea City," and had sailed for the respondent since 1929. During his last voyage

on the "Azalea City," the engineers were required to work a substantial amount of overtime. O'Connor worked his overtime under protest and had also protested while the ship was at sea for the other engineers at their request. The engineers regarded the overtime as a violation of the terms of the contract between the respondent and the M. E. B. A., of which they were members. The Chief Engineer of the ship told O'Connor that he would straighten out the overtime when the ship reached Mobile.

When the ship arrived in Gulfport, Ingram, the respondent's Assistant Port Engineer, boarded the ship, and without request from O'Connor, told O'Connor to take a vacation when the ship docked at Mobile, and that he would straighten out his overtime and transfer him to a coastal ship as O'Connor had previously requested. O'Connor was not entitled to a vacation, but did not know this, and left the ship at Mobile. Ingram testified that at the time he thought that O'Connor was entitled to a vacation. Although Ingram discovered within a few days that O'Connor was not entitled to a vacation, he made no effort to appraise him of that fact. Ingram stated that when a man is on a vacation he notifies the respondent when he is ready to resume work, and that O'Connor had not done this. However, the evidence discloses that the respondent was well aware of the fact that O'Connor was ready to resume work. O'Connor testified that he had met Ingram on the street one day after he had left the ship and had asked him if he thought that the respondent would give him employment. Ingram did not consider this request formal enough, and, indeed, testified that he thought that O'Connor was joking when he made the request. Moreover, it was customary for the respondent to notify an engineer when his services were wanted, and in the past O'Connor had been so notified on numerous occasions. However, O'Connor was never notified or recalled after leaving the "Azalea City," although there were vacancies in the engineering departments of the respondent's ships.

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The respondent alleges that O'Connor was not discharged but voluntarily left the vessel of his own accord at the termination of the voyage. The record clearly shows that O'Connor left the vessel on an approved vacation and was ready to resume work, which fact was known to the respondent. It is clear that the respondent resented O'Connor's activity in making the collective protest and did not recall him for that reason. The contract between the respondent and the M. E. B. A. offered no bar to the type of protest which O'Connor made while the ship was at sea. Although the contract provided a method for adjudication of disputes,[5] there is no indication that the provision was intended to preclude a collective protest, especially when the procedure for the amicable adjustment of grievances provided in the contract was not immediately available while the men were at sea. In fact, the respondent does not contend

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[5] Board Exhibit No. 11, Sec. 2: "All disputes * * * shall be determined by a Licensed Personnel Board consisting of two persons appointed by the Party of the First Part and two persons appointed by the Party of the Second Part."

that there was any impropriety in O'Connor's action. Moreover, the respondent does not claim that O'Connor's services were either unsatisfactory or unnecessary.

We find that the respondent discharged and refused to reinstate O'Connor because of his participation in the collective action described above. We further find that by this act the respondent discouraged membership in the M. E. B. A., by discrimination against a union member for his active exercise of the rights incident to such membership, and thereby interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act.

IV. EFFECT OF UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce, among the several States, and with foreign countries, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

206 We have found that the respondent, by refusing to grant passes to the authorized representatives of the N. M. U., for the same purpose and under the same conditions as it grants passes to representatives of the I. S. U., has interfered with, restrained, and coerced its employees. In order to remedy this unlawful conduct we shall order the respondent to issue passes in equal numbers to representatives of both the N. M. U. and the I. S. U., or its successors, under the same conditions.

The employees who were discriminatorily laid off are entitled to reinstatement with back pay. We shall order their reinstatement to their former positions with the back pay they would normally have earned, less any amounts earned by any of them respectively in the meantime. In determining the amount of back pay to be awarded to each employee, we shall order that the reasonable value of his maintenance on shipboard, from the time that the ship he was employed on sailed again after his discharge or lay-off, be added to the amount of his monetary compensation from the respondent.

Upon the basis of the foregoing findings of fact, and upon the entire record in the case, the Board makes the following:

Conclusions of law

1. National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama; Seamen's Reorganization Committee of the American Federation of Labor; International Seamen's Union of America; and Marine Engineers Beneficial Association are labor

organizations within the meaning of Section 2, subdivision (5), of the Act.

207 2. The respondent by interfering with, restraining, and coercing its employees in their exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subdivision (1), of the Act.

3. By discriminating in regard to the hire and tenure of employment of the employees listed in Appendices A and B, and C. J. O'Connor, and thereby discouraging membership in National Maritime Union of America and Marine Engineers Beneficial Association, respectively, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8, subdivision (3) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act.

Order

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Waterman Steamship Corporation, Mobile, Alabama, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From refusing to issue passes to authorized representatives of the National Maritime Union of America in equal numbers and under the same conditions as it grants passes to representatives

208 of the International Seamen's Union of America or its successors;

(b) From discouraging membership in National Maritime Union of America, Marine Engineers Beneficial Association, or any other labor organization of its employees, by laying off, discharging, or refusing to reinstate any of its employees, or in any manner discriminating in regard to their hire or tenure of employment or any terms or conditions of their employment;

(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Grant passes to authorized representatives of the National Maritime Union of America in equal numbers and under the same conditions as it grants passes to representatives of the International Seamen's Union of America or its successors;

(b) Offer to the persons listed in Appendices A and B and to C. J. O'Connor immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges;

209 (c) Make whole the persons listed in Appendices A and B and C. J. O'Connor for any loss of pay they have suffered by the respondent's discriminatory acts, by payment to each of them of a sum of money equal to that which each would normally have earned as wages—including therein the reasonable value of his maintenance on shipboard from the time that the ship he was employed on sailed again after his discharge or lay-off—during the period from the date of such discrimination against each of them to the date of the offer of reinstatement, less any amount each has earned during that period;

(d) Post immediately notices to its employees in conspicuous places on its docks and on its vessels, and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting, stating that the respondent will cease and desist in the manner aforesaid;

(e) Notify the Regional Director for the Fifteenth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.

Signed at Washington, D. C., this 18th day of May, 1938.

J. WARREN MADDEN,
Chairman,
EDWIN S. SMITH,
Member,
DONALD WAKEFIELD SMITH,
Member,
National Labor Relations Board.

[SEAL]

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Appendix A	*Appendix B*
Basil Brown [1]	Columbus Anderson
M. J. Burgess	Andrew Benron [4]
James Gilroy [1]	Fulbert A. Bodden [4]
Kenneth E. Graham [1]	Howard Bowen [4]
J. P. Hamilton [1]	Eric Butcher
Wesley Howard	Robert Crawford [4]
B. H. Ingram	James Dobbs [4]
James M. Jeffries [1]	W. Gold [4]
Marlyn E. Jones [1]	Herbert Hall [4]
A. C. King	Raymond S. Kettewell [4]
Herman Lee [1]	Otto K. Ortleb
Archie McWiggen [2]	Charles Perkins
J. B. Morrow [1]	Edward X. Rhone [4]
Edmund J. Pellitier [1]	Jesse J. Scott
W. Reynolds	C. E. Smith [4]
William Rodner [1]	James C. Stewart
R. F. Schuettner [1]	Bennett Bapiste [4]
C. W. (Jerry) Turner	
Earl Wilkerson [1]	
C. W. Wilson	
Dudley Beuk [1]	
Herman Zilberman [1]	
R. Reynolds	
F. Gordy [1]	
—— Lopez [1]	
Lewis Jones [3]	

212 [Secretary's certificate to transcript of testimony omitted in printing.]

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[1] Spelled in the shipping articles as B. H. Brown, J. E. Gilroy, Kenneth Graham, J. B. Hamilton, J. M. Jefferies, M. E. Jones, H. E. Lee, Jos. B. Monow, E. J. Pelletier, Wm. Rodin, Richard Schuettner, E. Wilkerson, D. H. Benk, H. Sillberman, Fred Gordy, Pedro G. Lopez.

[2] Listed in complaint as Bosun on the "Bienville"; name does not appear in shipping articles, but name of A. McGregor, Bosun, does appear there. Evidently the same individual.

[3] Name does not appear on shipping articles; listed in complaint as member of crew of "Fairland," but appears on respondent's Exhibit No. 21 as member of crew of "Bienville"; since motion to conform the pleadings to the proof was granted as to all parties we have included Lewis Jones in the crew of the "Bienville."

[4] Spelled in the shipping articles as Andrew Benion, F. Bodden, H. Bowen, R. Crawford, M. James Dobbs, W. R. Gold, H. Hall, R. S. Kettlewell, E. X. Rhone, Claude Smith, Bennette Baptiste.

213 Before the National Labor Relations Board, Fifteenth Region

Case No. XV–C–75

IN THE MATTER OF WATERMAN STEAMSHIP CORPORATION AND NATIONAL MARITIME UNION OF AMERICA, ENGINE DIVISION, MOBILE BRANCH, MOBILE, ALABAMA

Transcript of testimony

FEDERAL BUILDING,
Mobile, Alabama, November 1, 1937.

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock a. m.

Before WILLIAM SEAGLE, Trial Examiner.

Appearances

Joseph A. Hoskins and Berdon M. Bell, attorneys on behalf of the National Labor Relations Board. Stevens, McCorvey, McLeod, Goode & Turner, Merchants Bank Building, Mobile, Alabama, on behalf of the Respondents, by Gessner T. McCorvey, Esq.

214 PROCEEDINGS

(Due to delay in the arrival of the Trial Examiner the hearing was postponed until November 2, 1937, at 10:00 o'clock a. m.)

218 Before National Labor Relations Board, Fifteenth Region

Case No. XV–C–75

[Title omitted.]

FEDERAL BUILDING,
Mobile, Alabama, November 2, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 10:00 o'clock a. m.

Before WILLIAM SEAGLE, Trial Examiner.

Appearances

Joseph A. Hoskins and Berdon M. Bell, attorneys on behalf of the National Labor Relations Board. Stevens, McCorvey, McLeod, Goode & Turner, Merchants Bank Building, Mobile, Alabama, by Gessner T. McCorvey, on behalf of the Respondents. William L. Standard, 291 Broadway, New York City, by Max Lustig, of Counsel, on behalf of the National Maritime Union of America. Alex

oward, 415 Van Antwerp Building, Mobile, Alabama, on behalf
the Seamen's Reorganization Committee of American Federation
of Labor.

9 PROCEEDINGS

Colloquy

Trial Examiner SEAGLE. The hearing will come to order. Are
u ready to proceed, gentlemen?
Mr. HOSKINS. Yes, sir.
Trial Examiner SEAGLE. May I ask first that you state your ap-
arances for the record?
Mr. HOSKINS. Joseph A. Hoskins and Berdon M. Bell, appearing
r the National Labor Relations Board.
Mr. LUSTIG. William L. Standard, Max Lustig, of Counsel, ap-
aring for the National Maritime Union of America.
Mr. MCCORVEY. Stevens, McCorvey, McLeod, Goode & Turner, ap-
aring for the Waterman Steamship Corporation, by Gessner T.
cCorvey.
Mr. HOWARD. Alex Howard. I represent the Seamen's Reorgani-
tion Committee of the International Seamen's Union or, rather,
e American Federation of Labor; and this contract, which is the
bject of this controversy, was made between the Waterman Steam-
ip Corporation and my clients, the International Seamen's Union
America, and we understand the Act would permit any interested
rty to intervene, and I have prepared here a petition of inter-
ntion, which I would like to file to show that we are interested in
e results of the proceeding.
Trial Examiner SEAGLE. May I see the petition?
Mr. HOWARD. I have just been employed in the last day,
and I have not had a chance to get it properly signed.
Trial Examiner SEAGLE. Mr. Howard, I observe that the
tition has not yet been executed.
Mr. HOWARD. No, sir. My people just employed me on yesterday
d said they would appear this morning and sign the papers. He
here now, your Honor, and I could get him to fill it out.
Mr. Ross, what is your connection with the Reorganization Com-
ttee?
Mr. ROSS. Business agent.
Mr. HOWARD. What territory do you represent?
Mr. ROSS. I represent from Panama City to Gulfport.
Trial Examiner SEAGLE. Mr. Ross may sign the petition. How-
er, I wish also to call your attention to the fact that the prayer
the petition is improper in form. I mean, it asks that the com-
int be dismissed. I think it would be proper for him to ask
ve to intervene.
Mr. HOSKINS. Mr. Examiner, before you rule on the admissibility,
before the permit the petitioner to intervene, may I state that

neither counsel representing the Board nor counsel for the Mar
Union have had a chance to see the petition.

Mr. HOWARD. Mr. Examiner, suppose we let it be executed.

Trial Examiner SEAGLE. That petition is addressed to
Examiner, but I don't suppose Mr. Howard will obje
221 your seeing it.

Mr. HOSKINS. But it may be, it may very well be
Examiner, that we object to their intervention.

Mr. HOWARD. Well, let us get it executed first.

Trial Examiner SEAGLE. We will recess for five minutes.

(A short recess was taken.)

Trial Examiner SEAGLE. Mr. Howard, will you show that pe
to counsel?

(Mr. Howard exhibits paper to counsel.)

Trial Examiner SEAGLE. Do you wish to be heard on the pet
Mr. Hoskins?

Mr. HOSKINS. Yes, Mr. Examiner, I think I do, and I b
Mr. Lustig, representing the N. M. U., wishes to be heard.

Trial Examiner SEAGLE. Very well, you may proceed.

Mr. HOSKINS. I believe the petition should be denied, and
intervention should not be permitted, for several reasons, or i
event, if it is permitted, certainly the Trial Examiner should
definitely set the limits of the rights of the petitioner, if it is
mitted to intervene.

The petition presented in writing contains certain allegu
about the activities of the National Maritime Union. Obvi
those are not material to this case and should not be heard i
degree.

The petitioner states that it has this contract with
Waterman Steamship Company. It alleges that the co
222 meets all the regulations of the Wagner Act, and that
labor union is wholly qualified and capable of looking
the interests of its members.

There is no allegation whatever in the complaint that the W
man-I. S. U. contract is not in conformity with the Wagner
but I do call to the attention of the Examiner the fact tha
I. S. U., whom the petitioner states they succeeded, as the Sea
Reorganization Committee, the I. S. U. filed petitions with
Board in June, June 11th, asking for an election on practicall
of the steamship lines running on the Atlantic and Gulf c
Among the lines upon which they wanted an election was he W
man company.

A hearing was held in New York before a duly authorized
Examiner of the Board on June 21st. The Waterman Stea
Company was present at that time and represented by very
counsel.

On July 16th the Board issued a direction of elections in
case, and such direction of election was supplemented three t
on August 16th, September 11th, and September 17th. I m

wish to point out this for the information of the Trial Examiner in considering the petition; that on July 16th in its decision the Board stated in the following language that: "I. S. U. and N. M. U. each have contracts with various companies included in this case. By filing these petitions we believe I. S. U. has waived its
223 right to assert the existence of these contracts as a bar to elections." I was just reading that from the Board's decision.

On September 11th, in a supplement to the decision, the Board used this language:

"At present, none of the unions is in a position to act as the exclusive representative of the unlicensed personnel of the companies in bargaining with the companies."

I think these two decisions shed a little light upon the question of whether or not Seamen's Reorganization Committee should be permitted to intervene for the purpose of protecting any rights it might have under the contract.

Now, in their petition they further use the language in the last paragraph of their petition; they seek to set up an interest based upon the issuance of passes.

Now, in the complaint we have alleged that the Waterman Steamship Corporation refused to issue passes to the National Maritime Union of America to board their ships. The Waterman Steamship Corporation has admitted in their answer that they did so refuse and they insist on their right to determine who shall enter upon their private property. The existence of that right, of course, is up to the discretion of the Board. The question is clear-cut, whether the refusal to issue passes is a violation of the Act and par-
224 ticularly Section 8–1 of the Act. Along that line, I direct the Trial Examiner's attention to the wording of the Board in its supplement of August 16th, to its decision of July 16th, in this case in which the Board stated in substance, or I will just read this paragraph: "Complaints have been made to the Board and its agents that various steamship companies have granted passes to representatives of one union while denying them to the other, or that even though passes have been denied to representatives of both unions, that certain representatives have been allowed to Board vessels because employees of the company, favorable to the union which they represent, have admitted them without passes. Both of these practices constitute an interference with the elections which we have directed to be held. We, therefore, take this opportunity of serving notice on the companies that no such preference should be shown to either one of the unions involved, in the ways above described, or in any other way."

The Board made further reference to the question of passes in its decision of September 11th, in which it stated:

"In order to prevent such discriminatory tactics, it is necessary that employers should issue passes promptly to both sides, and in equal numbers, as above set forth, or else that passes and admit-

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tance to the ships be denied to agents or representatives of both rival unions."

225 Now, in view of the clear position the Board has taken on the question of passes, and in view of the allegations of the complaint, and the admissions of the answer, there is absolutely no question at all about the fact that whether or not passes were refused or granted, and certainly the Seamen's Reorganization Committee has no interest whatever and no right whatever to come into this court now to show how the granting of passes to the National Maritime Union of America might hurt their organization or activities on the Waterman Line ships, no more than the National Maritime Union would have the right to say that the issuance of passes to the I. S. U. would hurt them. That is a condition of the election ordered by the Board and served upon all of the parties.

I make further and final objection for the Board that contrary to the rules and regulations of the Board, namely Section 19 of the Board's Rules and Regulations, the petitioner has not shown any interest whatever justifying their admittance into the case.

Mr. LUSTIG. The petitioner herein seeks to intervene in a manner which does not concern it, and in which it has failed to show any interest whatever.

The matter before the Board is a hearing on charges pursuant to section 10-a of the Act, Subdivision 8 and Section 8, Subdivision 1 and 3.

Numerous men have been discharged because of their union
226 activities and their connection with the National Maritime Union of America, by the Waterman Steamship Corporation. The question is solely as to whether or not the Waterman Steamship Corporation has discriminated in its discharges against these men for their affiliation with the National Maritime Union of America.

The petitioner, who seeks to intervene, has no interest in the matter whatever. The validity of its contracts are not in question. The validity of its contracts with the Waterman Steamship Corporation is not in question. The rights to be determined here concern solely certain men who happen, incidentally, to be members of the National Martime Union.

We therefore respectfully request that the petitioner's right or petition to intervene be denied.

In addition, I wish to repeat that we concur fully with the legal reasons given by Mr. Hoskins for the Board. The numerous questions sought to be determined here by the intervener have already been determined by the Board.

Mr. MCCORVEY. We have no objection to the petition for intervention.

With reference to the statement just made by the last gentleman who spoke, he is in error, stating that the Waterman Steamship Corporation has discharged anyone on account of their membership in or affiliation with the National Maritime Union. I think

227 that that statement will be shown to be erroneous, but that is a matter of proof.

Mr. HOSKINS. Mr. Examiner, may I have one word, in order that the record will be clear, and that your position should be clear.

As attorney for the Board, I do not find myself entirely prepared to coincide with the statement of Mr. Lustig that the question of the validity of the contract is not in question.

Trial Examiner SEAGLE. I think that that is clear from the pleadings, because the answer of the respondent sets up the existence of a contract——

Mr. LUSTIG. But, all I say, Mr. Examiner, is that the Board, in its previous decisions, and I think those pertinent parts of that decision have been read by Mr. Hoskins, has decided on the question of the contract. We will concur in that—Mr. Hoskins may be correct in stating his position——

Mr. HOWARD. Mr. Examiner, may I say just a word on behalf of the right of the International Seamen's Union to intervene. We expect, and I think the petition recites—we expect the evidence to show that the seamen are very different from other classes of employees. They do not regularly work with the employer. They are simply employed on board of its ships to work a particular voyage.

They sign articles, under the laws of the United States, and 228 when they come back to their home port they are automatically free to take a new ship, and the ship owner is automatically free to employ anybody else.

Trial Examiner SEAGLE. Let us not go into the merits of that.

Mr. HOWARD. The purpose of the petition is to show that the National Maritime Union of America at the port of Mobile itself was guilty of unfair labor practices in that——

Mr. HOSKINS. Mr. Examiner, I don't think the unfair labor practices of the National Maritime Union has any relevancy or bearing on this case. If the gentlemen just speaking or the Seamen's Reorganization Committee has a complaint against the National Maritime Union, let them file a separate charge and a hearing will be held.

Trial Examiner SEAGLE. I don't see that any practices by the National Maritime Union are involved in this proceeding, under the issues raised by the pleadings.

Mr. HOWARD. But it would appear that the contract that was existing between the Waterman Steamship Corporation and the International Seamen's Union was never rescinded or repealed, and was still in force or effect—if that appears, then, wouldn't the question of the right of the petitioner come in, so that the Board might do full justice to everybody concerned, and wouldn't it then be necessary for the Board to inquire into just what was done in the entire matter?

229 It is alleged in the complaint of the National Maritime Union that they were not given free access to these ships and were not given free rights to be employed.

We think we have a right, under the Act, to come into Court and to show that the Waterman Steamship Corporation did contract with the International Seamen's Union, and that at the port of Mobile that these men, who claim they did not have free right to be employed, because the National Maritime Union was such a body as ought to have been the negotiating agency—as a matter of fact, these men that came in on these ships were not members of that National Maritime Union, they were members of the International Seamen's Union and they were persuaded, induced by a series of misrepresentations to go over temporarily to the National Maritime Union—

Trial Examiner SEAGLE. I presume the respondent will want to show that. May I see the decisions you have been referring to?

(Papers handed to Trial Examiner.)

Mr. HOWARD. Mr. Examiner, the petition stated that it produces the constitution of the petitioner. I may attach that to it.

Trial Examiner SEAGLE. I don't think it is necessary.

The motion for intervention is granted. The intervener, however, will be limited in the conduct of its case to the issues raised
230 by the existence of the alleged contract between the respondent and the intervener.

Mr. HOSKINS. Are we now prepared to go forward with the case, Mr. Examiner?

Trial Examiner SEAGLE. You may now proceed.

Mr. LUSTIG. May I at this time note an exception to the ruling?

Trial Examined SEAGLE. You will have an exception.

Mr. HOSKINS. At this time I offer as Board's Exhibit No. 1 the following papers, which I ask the reporter to carry on as Exhibit No. 1, with a special identifying number to each separate paper.

A copy of the original charge.

Copy of amended charge.

Copy of the complaint.

Copy of the amended complaint.

Copy of notice of hearing on the complaint and the amended complaint.

Copy of affidavit of service of complaint and amended complaint.

Copy of answer of the respondent to the amended complaint.

No answer was filed to the original complaint, because the amended complaint was filed within the time limit set for the filing of the answer to the original complaint.

231 Original of certification that these copies are true and correct copies of the papers that they are purported to represent, the certification being in original, by Charles H. Logan, Regional Director of the National Labor Relations Board for the Fifteenth Region and subscribed to before a notary public, as provided in the rules and regulations.

The respondent this morning has served an amendment to answer to amended complaint, calling attention to the fact that at the bottom of paragraph 5, on page 4 of the said answer the word "National"

should be changed to "International", to read "International Seamen's Union."

Mr. McCorvey. They are two typographical errors.

Mr. Hoskins. And that the word in the sixth paragraph of the said answer, page 5, spelled "perference" should be changed to read "preference." In view of the fact that these are minor typographical errors, the Board has no objection to the filing of this amendment at this time.

Trial Examiner Seagle. The documents enumerated by counsel, with the exception of the amendment to the answer of the amended complaint, will be admitted in evidence as Board's Exhibit No. 1.

(Thereupon, the documents above referred to were received in evidence and marked "Board's Exhibit 1-a to 1-h," inclusive.)

Trial Examiner Seagle. The amendment to answer to amended complaint will be admitted in evidence as Board's Exhibit No. 2.

232 (Thereupon, the document above referred to was received in evidence and marked "Board's Exhibit 2.")

Mr. Hoskins. In view of the Examiner's ruling on the petition for intervention, I will offer the original of this petition, which Mr. Howard has brought in, as Board's Exhibit 3.

Trial Examiner Seagle. May I call your attention, Mr. Howard, to the fact that under the rules you are required to serve four copies of the motion to intervene, an original and three copies. I will ask you, therefore, to supply three additional copies.

Mr. Howard. I will do that as soon as Court adjourns.

Trial Examiner Seagle. The motion for intervention will be admitted in evidence as Board's Exhibit 3.

(Thereupon, the document above referred to was received in evidence and marked "Board's Exhibit 3.")

Trial Examiner Seagle. Proceed, Mr. Hoskins.

Mr. Hoskins. I presume, Mr. Examiner, you are admitting the written motion, subject to the limitations you set forth in your ruling?

Trial Examiner Seagle. That is correct.

Mr. Hoskins. I offer in evidence certified copy of the order designating the Trial Examiner in this case, as Board's Exhibit No. 4.

Trial Examiner Seagle. The order will be admitted in

233 evidence as Board's Exhibit 4.

(Thereupon, the document above referred to was received in evidence and marked "Board's Exhibit 4.")

Mr. Hoskins. I believe it has been demonstrated, Mr. Examiner, that during the conduct of this hearing we will probably have occasion to refer quite often to the Board's rulings in connection with case R-157, generally known as the election case on the Atlantic and Gulf coasts, to which the Waterman Steamship Company was a party. I believe it might be, or it might simplify the matter of conduct, if we introduced at this time copies of the decision and the two supplements, the two supplements to the decision, and give them

exhibit numbers. I say that, recognizing the fact, of course, that the Board will take judicial notice of its own decisions, but I think it might lead to more efficiency in the conduct of the hearing.

Trial Examiner SEAGLE. I think it might prove convenient.

Mr. HOSKINS. Then, I ask that each of these be given a separate number, and I offer, as Board's Exhibit No. 5, a certified copy of the petition of the International Seamen's Union asking for an election on these ships of the Waterman Steamship Corporation.

Trial Examiner SEAGLE. I take it that there is no objection to
234 the admission of that petition. The petition will be admitted in evidence as Board's Exhibit No. 5.

(Thereupon the document above referred to was received in evidence and marked "Board's Exhibit 5.")

Mr. HOSKINS. I offer, as Board's Exhibit No. 6, the printed copy of the original decision in case R-157, decided July 16, 1937.

Trial Examiner SEAGLE. The original decision in case R-157 will be admitted in evidence as Board's Exhibit 6.

(Thereupon, the document above referred to was received in evidence and marked "Board's Exhibit 6.")

Mr. HOSKINS. I offer as Board's Exhibit No. 7 a supplement to that decision, still case No. R-157, the supple' having been issued on August 16th, 1937.

Trial Examiner SEAGLE. The supplement to the decision of August 16th, 1937, will be admitted in evidence as Board's Exhibit No. 7.

(Thereupon the document above referred to was received in evidence and marked "Board's Exhibit 7.")

Mr. HOSKINS. I offer, as Board's Exhibit No. 8, printed copy of a further supplement to the decision, this supplement having been issued on September 11th, 1937.

Trial Examiner SEAGLE. The supplement to the decision of September 11, 1937, will be admitted in evidence as Board's Exhibit No. 8.

235 (Thereupon, the document above referred to was received in evidence and marked "Board's Exhibit 8.")

Mr. HOSKINS. Mr. Examiner, there was another supplement to the decision which, in order that the record might be clear, probably a copy should be introduced. However, it dealt only with the steamship companies that were not specifically dealt with in the original decision and this supplement which I am speaking of now makes no reference whatever to the Waterman Steamship Corporation, but it is a supplement to the original decision.

Trial Examiner SEAGLE. Well, as it would shed no light on the issues in this case, I don't suppose it is necessary.

Mr. HOSKINS. It sheds no light whatever, but I did not want to introduce two supplements without calling the attention of yourself and the respondent to the fact that there was a third supplement.

Trial Examiner SEAGLE. Very well.

Mr. HOSKINS. Then I shall not offer it.

At this time, Mr. Examiner, in order to fully establish the jurisdictional powers of the National Labor Relations Board in the conduct of this hearing, I call your attention, just briefly, to the fact that in paragraphs 1, 2, and 3 of our amended complaint we allege certain factors and state certain conclusions, paragraph 1 alleging
that the respondent is an Alabama corporation, that it is en-
236 gaged in transporting passengers and freight between certain
named points; that it is engaged in operating tugs and lighters, and that it is engaged in the maintenance of longshoremen, or the employment of longshoremen.

The respondent, in its answer, admits it is an Alabama corporation; it admits that it is engaged in the transportation of passengers and freight between the United States and foreign ports, but denies that it is engaged in coastal commerce.

It admits, in answer to our paragraph 2, that respondent does maintain branch offices throughout the country.

In answer to the allegations contained in paragraph 3 of our amended complaint, the respondent admits that it is engaged in interstate commerce but, as I say, the respondent denies it is engaged in coastal commerce and the respondent denies that it maintains tugs and lighters and the respondent denies that it maintains longshoremen.

Of course, they clearly admit the existence of foreign commerce and the jurisdiction of the Board. However, in order that the record may be clear, I would like to call to your attention the findings of the Board itself in the decisions which I have introduced into evidence.

In the original decision of July 16, 1937, herein referred to as
Board's Exhibit 6, the Board found, pursuant to its powers,
237 that the steamship companies named therein, including the
Waterman Steamship Corporation, are engaged in operating vessels in interstate and/or foreign commerce, and further stated: "We find that the companies are engaged in traffic, transportation, and commerce, among the several states, and/or between the United States and foreign countries, and that the men engaged in the operation of the vessels of the companies are directly engaged in such traffic, transportation, and commerce."

I likewise direct your attention, if you please, Mr. Examiner, to the transcript of the hearing on this petition held in New York City on June 21, 1937, and at which the Waterman Steamship Corporation was present and represented by counsel, and I particularly direct your attention to pages 159, line 15, to pages 161, line 5, of the transcript of that hearing, and I would like to read into the record about five lines thereof.

Mr. Benn Barber was appearing as counsel for the respondent, Waterman Steamship Corporation.

Mr. Barber stated that the Waterman Steamship Corporation was one of the petitioners in that proceeding. It operates out of Mobile,

Alabama. It has twenty-one ships and "The corporation is p
fectly willing to go along with this election."

Mr. Moscovitz, the attorney for the Board, asked Mr. Barber t
following question:

238 "You consent, then, to the election?

"Mr. BARBER. We consent to the election.

"Mr. MOSCOVITZ. There is no question of jurisdiction?

"Mr. BARBER. No.

"Mr. MOSCOVITZ. Your vessels are engaged in Atlantic and coa
wise commerce, are they not?

"Mr. BARBER. The Waterman Steamship Corporation are engag
in foreign commerce. Occasionally they are chartered for oth
services, but they are all interstate."

Trial Examiner SEAGLE. May I ask whether counsel for the
spondent questions the jurisdiction of the Board in this case?

Mr. HOSKINS. No, sir; there is no question, but I am merely tryi
to complete my record.

Mr. MCCORVEY. We raise no such question.

Trial Examiner SEAGLE. You raise no such question?

Mr. MCCORVEY. No, sir.

Trial Examiner SEAGLE. Then, I take it that the stipulations
commerce in case R-157 may be taken to be true for the purpo
of the present proceeding, as far as the Waterman Steamship C
poration is concerned?

Mr. MCCORVEY. Mr. Examiner, I don't want to make any adm
sions, because I never heard of that before, and Captain Nic
239 son was not there. Mr. Barber was the lawyer in New York

Trial Examiner SEAGLE. However, you do concede the jur
diction of the Board?

Mr. MCCORVEY. We are not disputing the jurisdiction of the Boa
no, sir.

Mr. HOSKINS. I will call my first witness, Mr. James Bennett.

JAMES F. BENNETT, a witness called by and on behalf of the N
tional Labor Relations Board, being first duly sworn, was examin
and testified as follows:

Direct examination by Mr. HOSKINS:

Q. Will you state your full name, Mr. Bennett?

A. James Francis Bennett.

Q. Where do you live?

A. 161 Madison Street.

Q. Is that in Mobile?

A. Right, sir.

Q. What is your occupation at the present time, Mr. Bennett?

A. I was agent for the National Maritime Union up till l
evening.

Q. Are you still connected with the National Maritime Union?

A. No more; no, sir; except as member.

240 Q. You are still a member, but you are no longer agent; is that correct?

A. That is correct.

Q. Now, where all have you represented the N. M. U. as agent?

A. In Tampa, Florida.

Q. Any other ports?

A. Miami, Key West, right on to Port Tampa.

Q. You say Tampa, Miami, and Key West?

A. And Port Tampa.

Q. Port Tampa?

A. Yes.

Q. How long were you an organizer, Mr. Bennett?

A. About five or six months.

Q. That is the preceding five or six months to the date of this hearing, would you say?

A. Yes, sir.

Q. Prior to being an organizer for the N. M. U., what was your occupation?

A. Seaman.

Q. How long have you been going to sea?

A. Between nine and ten years.

Q. When was the last time you went to sea?

A. June 5th or 6th, on the "Gertrude Kellogg."

Q. That is June 5th or 6th of this year?

A. This year; yes, sir.

241 Q. In the nine or ten years you have been going to sea, Mr. Bennett, from what ports did you sign articles and sail?

A. I signed articles from Baytown, Texas; New Orleans, Mobile, Baltimore, New York, and San Pedro, California.

Q. And will you tell the Examiner some of the companies for which you have sailed?

A. I sailed for the Richfield Oil Company; Standard Oil Company of New Jersey; Standard Oil Company of New York; Standard Oil Company of California; Pure Oil Company; Columbai Steamship Line; and The Gulf Steamship Line.

Q. Now, were you an organizer for the N. M. U. in July of this year?

A. Yes, sir.

Q. Where were you stationed at that time?

A. Tampa, Florida.

Q. As such organizer, did you have occasion to contact the crews of the S. S. "Bienville" and S. S. "Fairland"?

A. I contacted them; yes, sir.

Q. Will you tell the Examiner, in your own words, the circumstances surrounding your contacting of those crews?

A. Yes, sir; about one o'clock in the morning a couple of the members of the crew of the "Bienville"——

Trial Examiner SEAGLE. Will you state the date on which these talks took place?

The WITNESS. Right offhand I could not state the date.

242 Trial Examiner SEAGLE. Well, approximately what was it?

The WITNESS. Around July 5th or the 10th, something like that.

Q. You would fix it, Mr. Bennett, as the early part of July; do I understand you correctly there?

A. Yes.

Q. Now, will you go ahead with your story, please.

A. I met a couple of the members of the crew on Franklin Street, and they asked me if I had received a letter, and I told them no, and they said, "We sent a letter to the N. M. U.," and that the whole crew held a meeting and they wanted the N. M. U.

Q. Now, let me interrupt you. When you use the term "we" you are quoting the gentlemen who contacted you?

A. Yes, and they asked me, "Will you want to come aboard ship?" and I said, "Why, certainly," and I started to go aboard ship with them about two o'clock in the morning, and there was nobody stopping me.

Q. Which ship was that?

A. The "Bienville."

Q. And do you know the names of those men who saw you?

A. I know one of them; yes, sir.

Q. What is his name?

A. Jerry Turner.

Q. You say you did go down to the ship?

243 A. Yes, sir.

Q. Did you have any trouble getting on?

A. No, sir.

Q. Will you tell us what transpired after you got c...

A. I talked to several members of the crew and they asked me to come back in the morning. About seven-thirty that morning I met Jerry Turner and a fellow by the name of Ingram, I think, I met them ——

Q. Was he also a member of the crew?

A. Yes, sir; and they took me aboard ship and I went into the messroom, and the fellows asked me was I prepared to sign them up, and I told them yes, so they asked me to go ahead and sign them up. After I signed them up, the Mate came in there ——

Q. Just a moment, before you go on to after you signed them up. Will you tell us the procedure how you signed them up?

A. Well, I exchanged books for them.

Q. Where abouts in the ship did this take place?

A. In the messroom, the crew's messroom.

Q. And did the men come in there to you, is that correct?

A. They were already in there, the whole crew, practically.

Q. And you say you exchanged books. Will you explain to the Examiner what you mean by exchanging books?

A. They told me they wanted to exchange the International Seamen's Union books for the National Maritime Union books.

244 Q. Do I understand you correctly, when you belong to the I. S. U. or the N. M. U., you have a book that shows your membership?

A. Yes, sir.

Q. Not just a card, but a book?

A. No, sir; a book.

Q. And in this case you took their I. S. U. books and gave them N. M. U. books, is that correct?

A. Yes, sir.

Q. Will you now go ahead with your story, please.

A. After the Mate came down, he asked me what I was doing, and I told him, and he asked me to explain what the union was about, and I explained to him as far as I could, and then a fellow by the name of Robert Epps, agent for the International Seamen's Union came in and said he was going to run me off the ship, and the crew would not stand for it, and they told him that they would like to hear both sides of the story, so, he proceeded to give his side of the story about his organization, and I gave my side of the organization, and the crew still demanded to change their books.

Q. I don't remember your exact words, but you stated he tried to run you off the ship, or something like that.

A. Yes.

Q. Will you give us a little bit more in detail the conversation that took place?

A. Robert Epps came aboard the ship and said, "All right,
245 that is enough for the signing of books" and to get off the ship, and I asked him who he was and by what authority he told me to get off the ship, and the members of the crew jumped and said, "We asked him to come aboard the ship, and he is going to say what he wants to say" and then, when Robert Epps seen he could not get me off the ship, the crew would not let him get me off, and the crew told him, "If you want to run him off, we will run you off" and he kept on talking, and then he accused me of being a Communist and getting fifty dollars a week, and the crew laughed at him when he said that.

Q. That about completes your conversation with Mr. Epps, doesn't it?

A. We argued pro and con about the organization, and he told me what a bunch of radicals were in my organization and I told him what a bunch of crooks his leadership was. That is all there was to it.

Q. You stated then that the Mate also spoke to you?

A. Yes, sir.

Q. Will you give us that conversation, in as much detail as you can remember it?

A. When the Mate came into the messroom he said, "Have you got a pass?"

Mr. McCorvey. The Mate, what was his name?

The Witness. I don't know the Mates's name. I told him
246 I didn't have no pass and he asked me—I told him nobody

asked me for one when I came aboard, and he said, "Well, you know you have got to have a pass" and I said, "Yes, sir" and he said, "All right, as long as you are here now"—and the crew came between and told him that they asked me to come aboard, and he said, "All right, as long as you are here, just so long as there is no trouble," and we assured him there wouldn't be any trouble, and then I walked off the ship.

Q. Was there any other organizer with you?

A. A fellow by the name of Charles Booth.

Q. How many members of the crew did you sign up that time, Mr. Bannett?

A. I believe the whole crew was signed up.

Q. That was on the "Bienville"?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. Mr. Bennett, at this point, am I correct in assuming that only unlicensed personnel are eligible for membership in the N. M. U.?

A. Yes, sir.

Q. And when you speak of the whole crew, you speak of that part of the crew that is unlicensed?

A. Yes, sir.

247 Q. Did you have occasion to go abroad the same boat again?

A. Yes, sir; I went back again about noon time with some literature and papers which I brought. They asked for some literature and papers, and about that time the "Fairland" came in, and the crew asked me if I had seen the fellows yet and I told them I had not been aboard yet, and they said, "Well, go ahead, go aboard, and we will talk to some of our friends over there" and it seemed like the crew had made up their minds to change to the N. M. U. and were waiting for the ship to tie up.

Q. This was at Tampa?

A. Yes, sir.

Q. Did you subsequently get aboard the "Fairland"?

A. I tried to get aboard, but they stopped me at the gangway.

Q. Who stopped you?

A. The Mate and the watchman.

Q. Did you have any conversation with them——

Trial Examiner SEAGLE. In view of the fact that the answer of the respondent admits that passes have been refused I don't see any need to go into that.

Mr. HOSKINS. I am not going into this conversation to show so much the refusal to issue passes, but to show the circumstances and the fact that this crew had signed up with the N. M. U.——

248 Trial Examiner SEAGLE. That is proper. I thought you were going into the refusal to issue passes.

Mr. HOSKINS. I have to go into a part of it, so I won't be accused of only giving a part of the——

Trial Examiner SEAGLE. I am merely suggesting this to you so at you will be as brief as possible insofar as the situation with spect to the passes are concerned.

Mr. LUSTIG. Then, there can be no question about that——

Trial Examiner SEAGLE. No issue was raised by the respondent in at respect. The issue—the answer admits the passes were refused representatives of the N. M. U.

Q. Did you have any conversation with them?

A. Yes, I did; I had some conversation.

Q. Then, I will ask you this question: Did you subsequently con-ct the men?

A. Well, I walked off the gangway and down onto the dock, and couple of the fellows said, "What is the matter?" and I told them, Well, I tried to get aboard and contract you and talk to you as ou requested to have me at dinnertime, but the Mate would not let e aboard," so they held some caucus of the men there who were ot working, and they said, "We will get you aboard or we don't ork," so they went and seen the Captain, I believe, and the Captain ave me permission to go aboard the ship.

Q. And did you sign up any of the crew of the "Fairland"?

A. All excepting three.

Q. Do you know the names of those three that you did not gn up?

A. No, sir; I don't.

Q. Can you remember or place the names of the men you did gn up?

A. Well, I have got a list.

Q. You have a list in your possession?

A. No, sir; I got it down the office.

Q. I show you a copy of the complaint in this case, in which are ted the members of the two crews, whom it is alleged were dis-arged because of their membership in the National Maritime nion—you have testified that the "Bienville" crew were signed up e hundred percent, I believe?

A. Yes.

Q. I ask you to consult the list of the names listed under S. S. airland" and tell the Examiner whether You have an independent ollection of signing up those men or any of them?

A. Well, there were two of us at the time we signed the fellows , a delegate and myself, Charles Booth, and we were right in the ss room signing the crews up.

Q. Can you identify any of the names?

A. I signed up Lewis Jones, Herbert Hall, Robert Crawford, lumbus Anderson, Andrew Benron, C. E. Smith, James C. Stewart, and Bennett Bapiste.

Q. Do you recognize the other names as the names of members of the N. M. U.?

A. You mean in this?

Q. In that same group under the S. S. "Fairland"?

A. I recognize these names.

Q. You recognize all the names as being members of the N. M. U.?

A. Not all of them. I recognize a lot of them.

Mr. Hoskins. Mr. Examiner, in view of your statement of a moment ago, I would like to show, through this witness, even though the respondent in its answer has admitted it, admitted that it refused passes, I think it only proper to show the circumstances under which the request was made for passes, and the circumstances of the refusal. I am prepared to show that through this witness.

Trial Examiner Seagle. Well, what difference would these special circumstances make?

Mr. Hoskins. Only that it develops the picture more fully.

Trial Examiner Seagle. Well, the respondent, I take it, admits that it refused passes under any circumstances. Is that not true?

Mr. McCorvey. Well, the only passes we issued were to the International Seamen's Union and we only allowed them under a contract and under certain conditions by which we required them to
251 take insurance policies out to protect us against any claims. In other words, the I. S. U., we only permitted them to come aboard to collect dues under the contract.

Trial Examiner Seagle. That is not the allegation in your answer. You do not allege in your answer that you permitted representatives of the I. S. U. to board the ships for the purpose of collecting dues only.

Mr. McCorvey. Under the contract only when they took out insurance policies to protect us.

Trial Examiner Seagle. You do allege the necessity of taking out insurance policies. That is in your answer stating that you admitted them to come on board, but your answer does not state that you permitted them to come on board only for the purpose of collecting dues.

Mr. McCorvey. When the matter of voting came up, we stated we would not allow the I. S. U. to come on board for soliciting of memberships of voting. In other words, both of the unions were treated alike. The only position we took is, we had a contract with the I. S. U. and under the contract, under certain conditions, the men were permitted to board the vessels.

Trial Examiner Seagle. I think, in view of that statement, I will permit the testimony.

Mr. Lustig. May I ask at this time, it is the contention of the Waterman Steamship Corporation that if the National Mari-
252 time Union had complied with the conditions that they laid down, to cover them with an insurance policy, for their agents, that the Waterman Steamship Corporation would have granted permission to the N. M. U.

In other words, I would like to get a clear definition of what the position of the Waterman Steamship Corporation is with reference to these passes?

Trial Examiner SEAGLE. Is it your position, Mr. McCorvey, that
u would have issued passes if the representatives of the N. M. U.
mplied, or offered to secure insurance?
Mr. MCCORVEY. No, sir. In other words, the ships are privately
wned, and we do not allow anybody on there without first getting
surance, and we are protected. We permitted the I. S. U. men to
te there only because of our contract with them, and they had that
ght subject to regulations subscribed by the Waterman Steamship
orporation to come on there, and the Waterman Steamship Cor-
oration prohibits them from coming on there for the purpose of
oliciting membership in the I. S. U. We would not like to have
em come on there at all, except that the I. S. U. collects its dues
d they have to come on, and we permit them to do that.
Trial Examiner SEAGLE. The only question is, if you would have
ermitted the N. M. U. to come on there if they offered to secure
surance?
Mr. MCCORVEY. No, sir; no more than any other person.
Q. Mr. Bennett, as organizer for the N. M. U., did you ever
3 have occasion to request the Waterman Steamship Corpora-
tion to issue a pass to you to go on board it's ships?
A. Yes, sir.
Q. When did that take place?
A. I think it was September 24th or 25th.
Q. Of this year?
A. Yes, sir.
Q. Who did you contact at the Waterman Steamship Corpora-
on?
A. Captain Nicolson.
Q. Who is Captain Nicolson? If you know.
A. I think he is the vice president, an executive of the Waterman
eamship Corporation.
Q. Will you state to the Trial Examiner the circumstances sur-
unding your request?
A. Well, I went up to Captain Nicolson's and I told him that
der the instructions of the Gulf organizer, of the National Mari-
me Union, I was requested to come down there to ask him for
sses for the election of the N. L. R. B., and Captain Nicolson told
e he did not want to give me any passes, because of having a con-
act with the I. S. U., and if he gave me any passes there would
trouble aboard his ships, and I assured him there wouldn't be any
ouble, and Val DeFlron, the delegate who was with me, told him
if he did not issue us the passes the N. L. R. B. will take the
case to court, and I told Captain Nicolson "well, Captain, the
National Maritime Union does not want to cause any trouble
th any company. In fact, we would rather work with the com-
ny and we have proven that we can. We put on ships, men with
perience, and we have had no trouble with any of the big steam-
p companies like Waterman's and Lykes" and he still insisted
t he was not going to give me passes because of having trouble

aboard the ships and having a contract with the I. S. U., and then, I told him I was going to get in touch with the National Labor Relations Board in New Orleans, notifying them about this, and he said, "Well, go ahead" and I said, "Well, you might have to fight this out in Court." He said, well, he was well prepared to fight it out in Court, and then I left him and I sent a wire to Mr. Logan advising him I was refused passes to go aboard the ships of the Waterman Steamship Corporation.

Q. Who is this Mr. DeFlron who you spoke of?

A. He was a delegate of the National Maritime Union.

Q. Where did this conversation take place with Captain Nicolson?

A. In Captain Nicolson's office.

Q. You say you left his office and sent a telegram to Mr. Logan?

A. Yes.

Q. And who is the Mr. Logan you referred to?

255 A. He is the Regional Director of the National Labor Relations Board of this district, the Fifteenth.

I forgot to say something about the "Fairland." On the "Fairland," the Mate asked Lloyd Phillips, the Gulf organizer of the National Maritime Union and myself to come up to his room, and we went up to his room and he asked how the boys were getting along with the National Maritime Union and we explained it to him, and then he asked if it was possible for him to pay up his back dues in the Masters, Mates and Pilots Organization and be in good standing, because, prior to that, he was a member of the Masters, Mates, and Pilots, and I told him that could easily be done by getting in touch with the Masters, Mates and Pilots Organization in New Orleans.

Q. Did this conversation take place in Tampa?

A. Yes, sir.

Q. On board the "Fairland"?

A. Yes.

Q. Is that all that took place then?

A. Yes, except he was glad the men changed to the National Maritime Union and we talked to the Captain, and, if I am not mistaken, we put two men aboard that ship, two members of the crew.

Q. What do you mean you put two men on?

A. Well, the Captain asked for an ordinary seaman and for a mess boy, or an A. B.

256 Q. You mean that these vacancies were created at Tampa?

A. Yes, sir.

Q. And you filled them with N. M. U. men?

A. Yes, sir; and the same thing happened on the "Bienville," the captain asked for a mess boy and an A. B.

Q. Referring back, now, to your conversation with Captain Nicolson, you stated you sent a telegram to Mr. Logan?

A. Yes.

Q. I show you a copy of a telegram. This is not a certified copy, however, but it has been identified as Board's Exhibit No. 9 for

entification, and I ask you if this is a copy of the telegram you
it?
A. That is right; I sent this.
Mr. HOSKINS. I offer a copy of this telegram in evidence as Board's
hibit 9.
Trial Examiner SEAGLE. Has counsel had an opportunity to
amine it?
Mr. MCCORVEY. Yes.
Trial Examiner SEAGLE. May I see the telegram?
(Mr. Hoskins hands paper to Trial Examiner.)
Q. Did you receive a reply to that telegram?
A. Yes, I did.
Trial Examiner SEAGLE. Is there objection to the admission of this
egram?
Mr. MCCORVEY. No, sir.
Trial Examiner SEAGLE. I cannot see any objection to it,
except that it proves a fact which is not denied.
Mr. HOSKINS. Mr. Examiner, the thing I want to develop is that
e Waterman Steamship Corporation refused unconditionally to
ue passes to the National Maritime Union.
Trial Examiner SEAGLE. I believe Mr. McCorvey has stated that to
the position of the company, and that it would not issue passes
the representatives of the National Maritime Union under any
cumstances. Is that correct?
Mr. MCCORVEY. That is correct.
Trial Examiner SEAGLE. Is that your position?
Mr. MCCORVEY. Yes; not under existing conditions while our con-
ct is in force. I believe we would be breaching our contract with
e International Seamen's Union.
Trial Examiner SEAGLE. Well, does your contract with the Inter-
tional Seamen's Union affirmatively prevent you from issuing
sses to any other union?
Mr. MCCORVEY. No, sir; but I say in view of the contract we cannot
mit, and we only issue them to the International Seamen's Union
ler certain conditions.
Trial Examiner SEAGLE. Well, your contention is that you would
permit representatives of the National Maritime Union on board
ler any conditions?
Ir. MCCORVEY. Yes, sir; we could not allow them, and we only
allow the I. S. U. men on board under certain conditions.
Trial Examiner SEAGLE. I don't think that this telegram is
admissible.
r. MCCORVEY. It looks to me like we are taking up a lot of addi-
al time, and I do not want to prolong the record by adding a
f exceptions.
rial Examiner SEAGLE. The ruling is I will not receive it.
r. HOSKINS. And may I have an exception, please?

Q. Mr. Bennett, I show you a telegram, referred to as Board's Exhibit 10 for Identification, and ask you if you identify that telegram?

A. That is right, sir.

Q. What is it?

A. I got that telegram from Mr. Charles Logan.

Q. Is that a reply to your telegram?

A. To the telegram I sent; yes.

Q. Referred to as Board's Exhibit 9 for Identification?

A. Yes.

Mr. HOSKINS. I now offer in evidence, as Board's Exhibit 10, the reply of Mr. Logan to Mr. Bennett's telegram. Respondent's counsel has already seen it.

Trial Examiner SEAGLE. In view of the fact that this telegram shows that the respondent refused to change its position, after advice by an agent of the Board, that it should issue passes, I will
259 admit the telegram. I take it that there is no objection?

In view of the fact that I am admitting that telegram, I think it would be better to reverse my previous ruling and admit both. In other words, the correspondence would not be complete unless I did.

The telegram addressed by Mr. James Bennett to Mr. Charles Logan will be admitted in evidence as Board's Exhibit 9.

(Thereupon the document above referred to was received in evidence and marked "Board's Exhibit 9.")

Trial Examiner SEAGLE. The telegram addressed by Mr. Logan to Mr. James Bennett, in reply to the previous telegram, will be admitted in evidence as Board's Exhibit 10.

(Thereupon the document above referred to was received in evidence and marked "Board's Exhibit 10.")

Q. Mr. Bennett; after receiving the telegrams just admitted in evidence as Board's Exhibit 10, what did you do?

A. I tried to get in touch with Captain Nicolson at his office, and he was not there, so I got his telephone number from somebody in his office, the phone at his home, and I called up his home, and some woman answered me and told me he was not in right then, and to call back in an hour or so. I called back in an hour or so and I asked him if he received a copy of this telegram, as suggested here by
Mr. Logan, and he said he did, and I said, "And what is your
260 decision?" and he said, "I still stand firm in not issuing passes" and I told him I was going to notify Mr. Logan to that effect, and I proceeded to call up Mr. Logan at the N. L. R. B. and Mr. Logan was not there, and I talked to a fellow named Barker and I told him the whole story.

Q. At any time in your conversation with Captain Nicolson did he say to you that the only conditions under which they issued or would issue passes were, that you would not interfere with the men while at work, or that you would take out insurance to protect the

Waterman Steamship Corporation, and, I am quoting now from the respondent's answer—"against any claim, loss, or damage, or liability for loss of life or injury occurring to a representative of the said International Seamen's Union of America while on the property or while on board a vessel of this respondent"?

A. No; sir.

Q. He did not offer to give you passes under those conditions?

A. No; sir.

Q. Now, Mr. Bennett, you have stated that you have been going to sea for nine or ten years, I believe?

A. Yes; sir.

Q. I want to ask you a few questions, based on your experience and your knowledge along that line. First of all, have you ever been a member of the I. S. U.?

261 A. Yes, sir; I have been a member of the I. S. U.

Q. When did you first join the I. S. U.?

A. In April of 1935.

Q. And you retained membership until when?

A. Until December.

Q. 1935?

A. Yes, sir. That is, I was paid up until December 1935, but I quit the I. S. U. in October during the strike.

Q. Are you referring to 1935, 1936, or 1937?

A. 1935.

Q. And then you joined the N. M. U.?

A. Yes, sir.

Q. Now, based on your experience as a seaman, or experience in the union, and your general knowledge of the situation in the various ports from which you have sailed and the lines on which you have shipped, I will ask you to state what is the custom, if any, as to whether a crew which brings a ship into port, that is into its final port, sails on that ship when it leaves again?

Mr. Howard. We object to that question, Mr. Examiner, on behalf of the intervener, on the ground that the Federal law prescribes that at the conclusion of a voyage the seamen are released. In view of the contract we have with the Waterman Steamship Lines I don't think the custom could interfere with or break up that con-

262 tract, especially in view of the provisions of the Federal Law that at the end of the voyage the men are released and discharged.

Mr. Hoskins. Mr. Examiner, I beg to differ with Mr. Howard. The Federal Law provides, as I understand it, that seamen sailing on foreign orders are still under articles at the expiration of those articles, until they leave the ship, and the Federal Law does not provide at all for the termination or the cessation of employment between the employer and the employee by the mere expiration of the articles, and I think custom shows, as a matter of fact, that all parties to the ship, namely, the crews, the union, and the seamen consider

that there is a continuity of employment right straight through, and that the signing of articles, on and off, are but incidentals, you might say. Certainly, however, the question is material.

Trial Examiner SEAGLE. Objection overruled.

Mr. MCCORVEY. Will your Honor permit me to make a statement? I didn't know you were going to rule so quickly. So far as the Waterman Steamship Corporation is concerned, we have not objected to much of this evidence, which we think is irrelevant——

Trial Examiner SEAGLE. Well, the evidence is not irrelevant. I merely stated that the evidence related a fact which was admitted.

Mr. MCCORVEY. The situation to which I wish to call
263 your Honor's attention is this: As far as the Waterman Steamship Corporation is concerned, when these men came in, one of these vessels alleged in the complaint, went in for repairs and the other vessel went on dry-dock, and the men were all signed off by the United States Shipping Commissioner, and the voyage was terminated and they were no longer employed by the Waterman Steamship Corporation.

When it came time to re-employ a crew to go out, under the contract that we had with the I. S. U. we had to give preference to their members.

Mr. HOSKINS. Of course, Mr. Examiner, we do not subscribe to the conclusions of respondent's counsel.

Trial Examiner SEAGLE. The objection is overruled.

Mr. HOWARD. Exception.

(Question read.)

Mr. MCCORVEY. I would like to make this suggestion, that you add to the question where the ship comes into port and lays in dry-dock until it sails again.

Mr. HOSKINS. Mr. Examiner, I ask respondent's counsel to permit me to conduct the case as I see fit.

Mr. MCCORVEY. We make that additional objection.

Trial Examiner SEAGLE. The question as framed is a proper one.

264 Q. Do you understand the question, Mr. Witness?

A. I would like to have it read to me again.

Q. (Question read.)

A. A majority of the ships I have been on usually give their crews preference on resigning, and I have even seen where the company went so far as to extend the articles without the crew signing on. In other words, if you make the trip to New York and back here, say, you sign on for three months, and then you come back within four or five days of the three months, they extend for those articles without the crew having been signed on at all. They still go under the same articles.

Q. What would you say with reference to foreign articles?

A. It has been the same way with foreign articles. If a crew comes in and they pay them off, they re-sign them on at the next

ble, or sometimes on the same table where the commissioner is on other end paying them off, and signing them on at the same time.
Q. I will ask you to state what is the custom, based again on your perience and knowledge detailed in my previous question, as to ether a crew is retained when the boat goes into dry dock and is d up for temporary repairs?
A. It is customary to keep a crew on. If she is in for any length of time, three or four months, sometimes they just keep three or four men on, and if she is in for only a couple of weeks, or at the most two or three days, it is the custom to keep the w on.
Q. Do you know if those customs have always been carried out the Waterman Steamship Corporation on Waterman vessels?
A. Well, I have always heard that they were.
Q. You have never sailed on a Waterman Steamship Corporation ip?
A. No.
Q. Your experience and knowledge, both as a member and an ganizer of the N. M. U., do the unions themselves recognize and nction this custom?
A. That is right, they do.
Q. Will you explain how they do that, to the Examiner?
A. The unions would rather see the crews stay on the ships when ey go into dry dock, and also they always give a man preference the ship's crew gets off that ship and they tie the ship up for a ng time, usually they give the same crew the preference of going ck on that ship when she goes out.
Q. As I understand it, in a union, is it not true that vacancies are nerally filled at the union halls?
A. That is right.
Q. And does the union consider there is a vacancy on a particular at at the mere expiration of the articles?
A. No, sir.
Q. Does the union consider that there is a vacancy at a time when a man has resigned or is discharged for cause?
A. What is that?
Q. Perhaps I had better restate my question. When does the on consider there is a vacancy which they are privileged to fill?
A. Well, when the company calls them up.
Q. Well, under what circumstances does the union agree that re is a vacancy?
A. Well, if the man quits, and if the company, or if the engineer s up and asks for a man or two.
Q. But until a man actually quits his ship, then the union does look to that boat for a vacancy, is that correct?
A. That is correct.
Q. They do not look at the mere expiration of the articles?
A. No, sir; they do not look at that.

Q. Is that procedure accepted by seamen generally?
A. Yes, sir.
Q. It is accepted by them?
A. Yes.
Q. And it is accepted by crews generally?
A. Yes, sir; it is always accepted.
Q. And to your knowledge, is it accepted by the companies?
A. Yes, sir; it is.

Mr. HOSKINS. I believe that is all.

267 Cross-examination by Mr. McCORVEY:

Q. Mr. Bennett, I understood you to say that it is customary, when a ship comes into port, and the voyage is over, to give preference of employment to the men who were on the crew when the ship came in, is that correct?

A. That is correct.

Q. You don't know that that is customary where there is a contract providing that preference must be given to certain unions, do you?

A. I don't understand that.

Q. Do you know of any custom in effect by which the members of a crew are re-employed, or given preference, when there is a written, signed contract providing otherwise?

A. Well, I never heard of a company laying off a while ship's crew in order to take another ship's crew from the union they got a contract with. That, I never heard done.

Q. I don't believe you caught my question. You sign up for a voyage when you go out, do you not?

A. Yes, sir.

Q. And then the men come in and are discharged and signed off; they are signed off before the United States Shipping Commission; is that right?

A. That is right.

Q. Now, I understood you to say that it was then customary
268 for the steamship company to sign up these same men and give them preference in shipping out again?

A. Yes.

Q. Now, the question I asked you was if you knew of any such custom prevailing in those cases where there is a contract, which, instead of saying that preference must be given to men who went on the former voyage, says that preference must be given to members of a certain union?

A. (No answer.)

Q. Do you know of any custom by which steamship companies breach their legal contracts in order to give preference to a crew that shipped on a former voyage?

A. No.

Q. You don't know of any such custom?

A. No.

Q. Mr. Bennett, you signed up a lot of these fellows with the N. M. U.?

A. That's right.

Q. There is a man you talked of as being named Jerry Turner?

A. Yes.

Q. Jerry is a nickname, is it not?

A. That's right.

Q. His name is Clarence W. Turner?

A. That's right.

Q. I ask you to look at these books of the National Maritime
269 Union, certificates of membership issued in the name of B. H. Ingram, shown to be signed up by Jimmie Bennett; also Clarence Turner, Kenneth Graham, Edward J. Pelletier, William Reynolds, Howard Bowern, and another name, just one name, Columbus—they were all signed up by you, were they not?

A. Yes, sir; that it right.

Q. Now, Mr. Hoskins asked you in great detail to state just what conversation took place when you signed these men up, and you told specifically everything that was said; did you not?

A. As far as I could remember; yes.

Q. Just for the purpose of refreshing your recollection, let me ask you if you told Mr. Ingram this, when you were trying to induce him to join the National Maritime Union at Tampa, on or about July 4th, when you went aboard the Steamship "Bienville," did you falsely and fraudulently represent to him that at the Port of Mobile, Alabama, to which the vessel was then and there found, at the home port, that the International Seamen's Union offices were closed——

Mr. Hoskins. I object to that, Mr. Examiner. That question has no relevancy whatever.

Mr. McCorvey. The gentleman went into great detail as to everything he told him, and I got affidavits from these men showing what representations he made, and certainly they can be allowed on my cross-examination of him, as to what he told Mr. Hoskins——

270 Mr. Hoskins. Mr. Examiner, the question is whether they joined and not the basis upon which they joined.

Mr. McCorvey. He stated in great detail what he told them, and I asked him if he stated everything, and I went on, I prefaced my question by asking him if he told them everything, and I want to show that he told them a lot more, and I want to attack his credibility. I think that it is proper cross examination. I did not bring out the matter. Mr. Hoskins was the one who brought it out and asked him about it in such great detail, and he told him, and I propose to show what all he told him.

Mr. Hoskins. I didn't ask the witness to state in detail everything that was said. I asked the witness to state his conversations with Mr. Turner, and what he said to these men is wholly outside of the scope of my direct examination. The question was whether he signed these men up.

Trial Examiner SEAGLE. I don't think this witness went into anything that might be described as minute detail of the conversation on board the ship. In any event, I don't think this type of testimony is relevant to the issues in the case. The objection is sustained.

Mr. HOWARD. Mr. Examiner, may I suggest, on behalf of the intervener, that as I understand the purposes of the act, that it may be very necessary that the National Maritime Union exists and be
271 fairly treated, but it should not be allowed to exist by the destruction of any other union that exists at the time, and has a contract with the Waterman Steamship Corporation, and that in order that the hearing might reach the proposition under the Act as to whether or not the National Maritime Union was unfairly discriminated against, I think it should be taken into consideration that the International Seamen's Union has a contract with the Waterman Steamship Line and if the acts and conduct of the agent or the delegate of the National Maritime Union should have for its purpose the unfair treatment of my client—in other words, if we had a binding contract with the Waterman Steamship Corporation and we were trying to comply with it, and we had been fairly treated, that is, the employees of the Waterman Steamship Corporation who were members of the International Seamen's Union, it would certainly be self evident that under the purposes and the principles of the Wagner Act, that the gentlemen here, who is agent for the National Maritime Union should not be allowed to proceed in such a manner as to inveigle, by false representations, any people becoming members of his union——

Trial Examiner SEAGLE. That is not an issue in this hearing, Mr. Howard.

Mr. MCCORVEY. We now offer in evidence, as respondent's exhibit 1, an affidavit made by B. H. Ingram, reading as follows:
272 "State of Alabama, County of Mobile. Before me——"

Trial Examiner SEAGLE. Are you going to read that whole affidavit?

Mr. MCCORVEY. I was going to read it, because I don't see how your Honor could intelligently act upon the admissibility of it without knowing its contents.

Trial Examiner SEAGLE. Let me see that affidavit.

(Mr. McCorvey hands paper to Trial Examiner.)

Trial Examiner SEAGLE. I have before me seven affidavits, six of which make allegations similar to those included in your last question to this witness.

Mr. MCCORVEY. Seven—six on the one boat. I have others from the "Fairland."

May I interrupt the Examiner one moment to make a statement? I could say that these fifteen affidavits are made by men listed in the complaint filed by the National Labor Relations Board, as men against whom the Waterman Steamship Corporations has discriminated against. They are all listed in the complaint.

Trial Examiner SEAGLE. Well, the affidavits allege that they were induced to quit their membership in the I. S. U. because of false representation. A few of the affidavits allege, however, merely that the individual in question changed to the N. M. U. because all other members of the crew did likewise. That certainly is not an
273 allegation of any unlawful conduct on anybody's part.

I don't believe th*ese* affidavits are competent for any purpose. I may say that I made that statement so that there would be sufficient proffer of proof, because I do not intend to admit the affidavits.

Mr. MCCORVEY. We offer in evidence the following documents as respondent's exhibits.

The affidavit of Reese——

Trial Examiner SEAGLE. I ask you also not merely to state whose affidavit it is, but state the date of each affidavit.

Mr. MCCORVEY. Yes, sir.

Exhibit No. 1, the affidavit of Reese H. Bryams, dated September 14th, 1937.

As exhibit No. 2, the affidavit of Werner Rudolph Gold, dated July 17, 1937.

As exhibit No. 3, affidavit of Bennett Bapiste, dated July 16, 1937.

As exhibit No. 4, affidavit of Herbert Hall, dated July 17, 1937.

As exhibit No. 5, affidavit of Jesse Scott, dated July 17, 1937.

As exhibit No. 6, affidavit of E. X. Rhone, dated July 12, 1937.

274 As exhibit No. 7, affidavit of W. Reynolds, dated September 14, 1937.

As exhibit No. 8, affidavit of B. H. Ingram, dated August 26, 1937.

As exhibit No. 9, affidavit of Clarence Turner, dated September 24, 1937.

As exhibit No. 10, affidavit of Kenneth E. Graham, dated September 15, 1937.

As exhibit No. 11, affidavit of E. J. Pelletier, dated October 5, 1937.

As exhibit No. 12, affidavit of Howard Bowern, dated July 22, 1937.

As exhibit No. 13, affidavit of Charles Perkins, Andrew Benron, and Columbus Anderson, all three on one affidavit, dated July 13, 1937.

We offer these separately with the consecutive numbers, and I understand your Honor overrules the introduction of each affidavit, and we reserve an exception to your Honor's ruling.

Trial Examiner SEAGLE. That is correct.

I wish to state, however, for the record that the affidavits were apparently executed for the purpose of securing reinstatement in the International Seamen's Union, and that each affidavit so states.

Mr. MCCORVEY. We except. We would like to request that the affidavits be copies into the record, whether relevant or irrelevant.

275 Trial Examiner SEAGLE. The request is denied.

Mr. MCCORVEY. We except. If your Honor is in error in saying that they are not admissible, I want to be able to present the matter——

Trial Examiner SEAGLE. You made sufficient proffer of proof.

Mr. McCorvey. No, sir; I have not attempted to state what the affidavits show. I wanted to read them, that is the reason I wanted to read the affidavits into the record.

Trial Examiner Seagle. I won't permit that, and I think I have made a sufficient statement of the contents of those affidavits.

Mr. McCorvey. Well, should they be left with the stenographer or shall I retain them?

Trial Examiner Seagle. Unless the affidavits are received in evidence they will not be retained by the stenographer.

(Affidavits in question marked exhibits R-1 to R-13, inclusive, and were retained by respondent's attorney.)

Mr. McCorvey. There is one thing that I wish to suggest, your Honor. I say, in event that the Board should decide that your Honor was in error in your ruling, in the event of an appeal, I have nothing in the record to show what it was I was offering. No, we stated, in general terms, that there were certain affidavits——

276 Trial Examiner Seagle. As I said before, I attempted to describe the character of these affidavits for the purpose of showing what you are attempting to prove. I think I made a sufficient summary of the contents of the affidavits to properly raise any question which you may wish to present.

Mr. McCorvey. I just wanted to present to that Court. My idea was, on the record, that you are ruling out evidence that we ought to have an opportunity to present on appeal. However, I think under the procedure I have a right, in a hearing before the Board, to introduce new evidence anyway.

Q. Mr. Bennett, some of the N. M. U. men are on Waterman ships now, are they not?

A. I think so.

Q. And some of them belong to both unions, don't they?

A. I couldn't answer that.

Q. Well, if they belong to the I. S. U., the Waterman Steamship Corporation has never discriminated against them, because they also belong to the N. M. U., has it?

A. I believe that the Waterman Steamship Corporation had discriminated against N. M. U. men.

Q. Well, you say some of them are on the boats now?

A. Correct.

Q. And don't you know when these boats were laid off, in order to take care of them, the Waterman Steamship Corporation gave
277 employment to a lot of these fellows around their other ships. Don't you know that?

A. I wasn't here at the time.

Q. Don't you know that the Waterman Steamship Corporation would not permit anybody to go on board its ships, except people they issue passes to? You know that that is their rule, that they don't permit anyone to go on without a pass?

A. Well, that is what I was told.

Q. And you went on this privately owned property without a ss, didn't you?
A. On this privately owned property?
Q. Yes; without a pass?
A. Yes.
Q. And you knew that that was a violation of their regulations?
A. I didn't know it at the time.
Q. You didn't know it at the time?
A. That's right.

By Mr. HOWARD:

Q. Mr. Bennett, may I ask if you are familiar with what they call e rotation system of employing men in the different unions?
A. That is right, we started that rotation system in the National aritime Union.
Q. That is the system used by the National Maritime Union for nploying men, is that right?
A. That is correct.
Q. Now, does the International Seamen's Union follow the same system?
A. The rotation system?
Trial Examiner SEAGLE. Will you describe the nature of the stem?
The WITNESS. Well, you put your name on a list and whoever mes behind you they also put their names on the list, and they go ound like that among the members, and your name is on there, it y be number one, and if your name is there, you ship out, and if hip comes in and if there are ten men to be put on it, they call em right out from one to ten, and whoever answers, gets the job. at is the rotation system.
Trial Examiner SEAGLE. You mean you put your name down at the l of the voyage?
The WITNESS. No, sir; that is in the union hall. It is not on the p at all.
Trial Examiner SEAGLE. This list is made up in the union hall?
The WITNESS. Yes, sir.
. Is that the way the National Maritime Union employs its men gives them their jobs on ships?
. According to the ship's list; yes.
. Does that rotation system apply to all of the men or does it apply to the men who come in for a job after they are paid off?
A. It applies to every man who comes in who is out of loyment.
Including those who come in and have been paid off?
Including everybody who is out of employment that looks to National Maritime Union, that belongs to the National Maritime n.

Q. So that if any men are employed, and they come in after they are paid off, and they want to go back on the same ship, do they still have to follow the rotation system?

A. Those that do not come in the hall, when they are paid off, no, but if a man goes off the ship altogether and the company calls up the hall, and that man is off the ship, he is registered.

Q. In other words, the rotation system applies to seamen seeking jobs on board a ship, and applies to all of them uniformly, except that the rotation system that you have described, does not apply to a crew of a ship that comes into the hall, a ship that pays its men off, if those same men want to go back on the same ship, the rotation system does not apply to them?

A. It only applies to men who are unemployed.

Redirect Examination by Mr. Lustig.

Q. Mr. Bennett, in your experience as a seaman——

280 Trial Examiner Seagle. Are you conducting the redirect examination?

Mr. Lustig. Yes, if I may.

Trial Examiner Seagle. I will permit you to do so, provided counsel for the Board waives his right.

Mr. Hoskins. I will withdraw my right to redirect.

Trial Examiner Seagle. I understand, then, you are now conducting the redirect examination.

Mr. Lustig. Yes, sir.

By Mr. Lustig:

Q. Mr. Bennett, in your experience as a seaman, and your experience with the companies that employ seamen, does a seaman regard himself as discharged or out of employment when he is paid off, or when he signs his discharge on the return of a voyage? I now refer myself exclusively to foreign voyages.

A. No, sir; he is not considered unemployed.

Q. When does he consider himself discharged or out of employment of the company for whom he has just shipped?

A. When somebody else takes his place.

Q. Does the company give him notice that he is finished with his job, if they want to discharge him?

A. He is supposed to get 48 hours' notice.

Q. Where a seaman returns to his home port, and he signs his articles of discharge, so-called, before the Commissioner, if the

281 company no longer desires his services, do they give him any notice?

A. They are supposed to give him notice, 48 hours' notice.

Q. In your experience have you always received such notice?

A. No, sir; not always.

Q. A large number of times——

A. The majority of times.

Q. And when do you receive such notice?

A. The day before getting into port, usually.

Q. And in the absence of such notice, what is the custom?
A. I stay aboard the ship and work for the company.
Q. You regard yourself discharged?
A. No, sir.
Q. And the company does not regard you as discharged?
A. No, sir.
Q. Now, the termination of the voyage under the ship's articles does not mean the same thing to you as a discharge from the company's employment, does it?
A. No, sir; it does not.
Q. And in your experience in going to sea, those two things do not mean the same thing?
A. No, sir; they do not.
Q. Now, have you ever been employed by a company which put its vessel into dry-dock?
A. Yes, sir; by a few companies.
Q. And you were a member of the crew of the vessel when
282 it returned to port?
A. That is right, sir.
Q. And you had signed your discharge, or I mean the company had signed your discharge under the articles?
A. Yes, sir; that's right.
Q. And was it the custom of the companies by whom you were employed to retain you while the ship was in drydock?
A. Yes, it has always been the custom.

Recross examination by Mr. McCONVEY:

Q. Mr. Bennett, suppose a ship comes in and is tied up for repairs; how long does the steamship company continue paying the crew and keeping them in their employe after they have signed up with the shipping commissioner?
A. Well, I have seen it as high as 18 or 20 days without even signing articles.
Q. I mean what is usual, when a ship comes in for repairs, like the "Bienville"?
A. Well, it all depends on how bit the job is.
Q. Well, involving some twelve or fifteen thousand dollars, which will take several days, do you mean to say that when you sign off with the shipping commissioner you are not then out of a job?
A. I have never been out of a job.
Q. And they just keep on paying you as long as the ship is being repaired?
283 A. I have seen it.
Q. No; I say they just keep on paying you as long as the ship is being repaired, regardless of how long it takes?
A. Unless the company finds it is going to take too long a time.
Q. Suppose they notify you that the ship is going into drydock, when you sign off; does that terminate your employment?
A. No, sir.

Q. What does it take to terminate your employment?

A. It takes, if they notify you that they don't need you on the ship anymore.

Q. But after the ship comes in and you sign your release in the presence of the Shipping Commissioner, it is your idea that they still owe you money unless somebody give you some formal notice that you are no longer working?

A. That is the custom I know.

Q. What kind of notice do they usually give you, Mr. Bennett, written notice?

A. No, sir! that they are tying the ship up or putting the ship up for repairs.

Q. Were you there when the "Bienville" came in?

A. No, sir.

Q. Were you there when the "Fairland" came in?

A. No, sir; I was in Tampa.

Q. And you have no personal knowledge of it?

284 A. No, sir; no personal knowledge. I am talking about other companies I have been with.

Trial Examiner SEAGLE. Any further questions of this witness?

(No response.)

Trial Examiner SEAGLE. The witness is excused.

(Witness excused.)

Trial Examiner WILBUR. We will take a recess until 1:45.

(Whereupon, at 12:45 o'clock p. m., an adjournment was taken until 1:45 o'clock p. m.)

285 AFTER RECESS

(Whereupon, the hearing was resumed, pursuant to recess, at 1:45 p. m.)

Trial Examiner SEAGLE. The hearing will come to order. You may proceed, Mr. Hoskins.

CLARENCE W. TURNER, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. HOSKINS:

Q. Will you state your full name, please, Mr. Turner?

A. Clarence Welch Turner.

Q. Do you have a nickname?

A. Jerry.

Q. Where do you live, Mr. Turner?

A. 117 Church Street, Mobile.

Q. What is your occupation?

A. Seaman.

Q. How long have you been going to sea?

A. About eight years.

Q. Will you name some of the ports from which you have signed articles and out of which you have sailed?

A. San Francisco, California; Port Arthur, Texas; New Orleans, Louisiana; and Mobile, Alabama.

286 Q. Now, will you name some of the steamship lines upon which you have sailed?

A. Isthmian Steamship Company, Gulf Refining Company, Standard Oil Company, B. & L. Shipping company. The Gulf-Pacific Lines and the Waterman Steamship company.

Q. When did you first sail for the Waterman Steamship Company?

A. I first shipped with the Waterman Company—may I refer to my discharge?

Q. Yes.

A. It was May 1936.

Q. What ship was that?

A. "Topa-Topa."

Q. You are testifying as to the names of those ships and the dates from the discharge slips furnished by——

A. (Interrupting.) The United States Shipping Commissioner.

Q. And I understand that those are given to you at the termination of each voyage, is that correct?

A. Yes, sir.

Q. And——

Mr. HOSKINS. Do you wish to see those discharge slips, Mr. Examiner?

Trial Examiner SEAGLE. I don't believe it is necessary. Does counsel for the respondent wish to see the discharge slips?

287 Mr. MCCORVEY. No, sir.

Q. Now, you say your first voyage was on the "Topa-Topa?"

A. Yes, sir.

Q. And how long were you on that boat, Mr. Turner?

A. I was on that boat from May 19, 1936 til July 3, 1936.

Q. And what boat were you on after that?

A. The "Arizpa."

Q. Is that also a Waterman boat?

A. Yes, sir.

Q. And what was the date of your sailing on that?

A. I shipped on the "Arizpa" August 31, 1936.

Q. How long were you on that?

A. I was on that ship until January 22, 1937.

Q. What was your next ship?

A. My next ship was the "Exarch," later renamed the "Bienville."

Q. When did you sign on that boat?

A. I signed on that boat February 16, 1937.

Q. How long were you on it?

A. I stayed on it until July 6, 1937.

Q. Now, you say it was later changed to the "Bienville?"

A. It was changed to the "Bienville."

Q. Do you know about when the name of the boat was changed from the "Exarch" to the "Bienville"?

A. Well, it was while we were loading to go across again; it was about the 3rd of the month, about the 3rd of May.

288 Q. And how many trips did you make on that boat?

A: Two trips.

Q. You say while you were loading to go across again, it was between the two trips?

A. It was while we were in the port here loading to go across again that the name was changed to the "Bienville."

Q. And will you tell us just briefly some of the ports you touched on each of those two trips on the "Bienville"?

A. On the first trip we made Glasgow, Antwerp, Bremen, and Hamburg and Rotterdam. I believe those were the ports on the first trip.

Q. Do you remember some of the ports on the second voyage?

A. LaHavre, Antwerp, Bremen, Hamburg, and Rotterdam.

Q. Now, on each of these trips were you sailing under articles?

A. Yes, sir.

Q. You have testified to a number of ports out of which you sailed, and as to a number of lines upon which you have sailed, and I ask you to state now, based upon your knowledge and your experience, what, if anything, is the custom as to whether the members of a crew stay on board a ship and continue in employment after the expiration of the articles and until the sailing of the vessel on its next voyage?

Mr. McCorvey. Mr. Examiner, I want to object to the ques-

289 tion unless it is going to be limited to a case as to what the custom is where the vessel is laid up for repairs or is braced on dry dock.

It is undisputed that when the "Bienville" came in it was laid up for repairs. Please, I understand it is undisputed. Nor has it been questioned that when the "Fairland" came in she went to drydock and I object to it when he talks about when the vessel comes in and sails right out again, what the custom prevailing is, in that case, that is not before the Court. That is not the custom we are concerned with. We are concerned with a vessel that comes in and is laid up for repairs and a vessel which is laid up in drydock: I think he is trying to prove the custom, but not to prove what existed in this case.

Trial Examiner Seagle. The objection is overruled.

I wish to ask at this time whether counsel for the Board concedes that one of these vessels was laid up for repairs and the other was in drydock.

Mr. Hoskins. I have not yet so conceded or stipulated, Mr. Examiner. The answer stated one was laid up for repairs and one went into drydock.

Trial Examiner Seagle. I am merely asking whether you dispute it.

Mr. Hoskins. At the present time I do not dispute it, but I would rather not be bound by a stipulation at this time.

290 (Last question read.)

A. They generally stay by the ship.

Q. Will you explain what you mean by "Stay by the ship?"

A. The stay on the ship, I have stayed on the ship myself and made coastwise trips picking up cargo, and then come back to the home port and sign articles to go across again.

Q. You stay by the ship——

(Interrupting.) Continuing to work on the ship.

Q. Continuing to work for pay, is that right?

A. Yes.

Q. Once again, your experience and your knowledge, what is the custom as to whether is retained while the ship is in drydock or while it is laid up for temporary repairs?

A. I have known men to continue working on the ship during repairs while it was in drydock here——

Q. What would you say was the general custom?

A. The custom is to keep these men by, unless it is too lengthy, unless the job is too lengthy.

Q. Carrying on again, as to this custom, that is the custom as you know it, will you tell the length or lengths of time——

A. I have never known any certain time set for that particular thing.

Q. Can you state of your own knowledge the time limits that

291 are considered average as to where a crew stays on or when it goes off?

A. I have known them to stay on fifteen or twenty days and continue working that long.

Q. Do you know whether these customs have been carried out by the Waterman Steamship Corporation?

A. I went on drydock on one ship for the Waterman Company and worked until we were back in the water again, and started loading to cross again.

Q. What was the name of that ship?

A. The "Arizpa."

Q. Do you remember when that was?

A. About the 15th of November, the 15th or 16th of November.

Q. What year?

A. 1936.

Q. And can you tell us how many days you were so engaged on the boat while in drydock?

A. We were in drydock two or three days and I continued repair work after we put back into the water at the state docks.

Q. How many days, all told, were you so engaged?

A. We were repairing for six days.

Q. Have you ever belonged to the I. S. U.?

A. Yes, sir.

292 Q. When did you first join the I. S. U.?

A. November 1935.

Q. And were you a member of the I. S. U. when you sailed on the S. S. "Bienville" on the last voyage you mentioned?

A. Yes.

Q. While you were a member of the I. S. U. did you notice or did you know whether or not representatives of the I. S. U. were permitted to come aboard the ships?

A. At all times.

Q. Were they accompanied by any officers or agents of the company on these visits?

A. No, sir.

Q. Were they permitted to contact the men?

A. Any time.

Q. Now, have you belonged to the N. M. U.?

A. Yes.

Q. When did you join the N. M. U.?

A. About the 1st of July.

Q. Will you state for the Trial Examiner the circumstances surrounding your joining the N. M. U.?

A. We were in Le Havre, France, and we had been talking over the situation going across.

Q. When you say "we," who do you mean?

A. The crew of the "Bienville," the unlicensed personnel. We had a meeting, it was called one morning about 3:45 a. m.,
293 and at this meeting they elected a chairman, a fellow by the name of Jones, and I was elected recording secretary. During this meeting they talked over conditions, working conditions, working rules, and living conditions aboard the ship, and they talked over the leadership of the different organizations. We all decided, the crew decided that we would rather have the rank and file rule in our organization, and there was a ballot cast; they voted one hundred percent, the crew that was present, to send a letter back to the States, to the N. M. U. delegates, requesting them they send a delegate back to the ship on the first port in the States. We thought that would be Tampa, Florida. When we got to Tampa, Florida, the delegate was not there——

Q. About what time did you get there, Mr. Turner?

A. About the first of July.

Q. And pursuant to your letter did the N. M. U. organizer meet the ship?

A. Not until several of us were ashore in Tampa. I, for one, met him at the China Seas, a cafe or a barroom on Franklin Street in Tampa.

Q. Who was the organizer you spoke to?

A. James Bennett.

Q. Did he subsequently sign up any of the men of the "Bienville" in the N. M. U.?

A. I think he signed them up one hundred percent.

Q. Where did that signing up take place?
A. It took place in the crew's lunch room on the "Bienville."
Q. Did you sign up there?
A. I did.
Q. Did any of the members of the crew sign up in your presence?
A. All of them.
Q. I would like to show you the amended complaint in this case, ard's Exhibit No. 1, and refer you, particularly, to the men listed ere as being discharged members of the crew of the S. S. "Bien- lle," and ask you to state whether you have an independent recol- tion as to any or all of them having signed up?
A. There is one that I don't remember seeing him sign up, that is erman Zilberman, able seaman; the rest I know signed up, but I not positive about Herman Zilberman.
Q. But as to the other men named under the title "S. S. Bien- lle" on page 3 of the amended complaint, Board's Exhibit 1, you e sure they signed up that night?
A. Yes.
Q. You saw them?
A. Yes.
Q. You say you signed up at Tampa?
A. Yes.
Q. Where did the boat go from there?
A. From Tampa to Panama City, I believe.
Q. And from Panama City——
A. Pensacola, Florida. I do know we made Pensacola, Florida, d on July 4th we were there.
Q. Then, where did you go?
A. To Mobile.
Q. And after you signed up was anything said to you about your ion affiliation by any of the officers of the company?
A. After I arrived here?
Q. After you signed up?
A. Yes.
Q. Will you state what was said, please?
A. I came up on the deck and I met Captain Nicolson and Mr. gram, and they were up on deck amidships.
Q. Where did this take place?
A. On board ship.
Q. Where?
A. At Mobile.
Q. This was after you reached Mobile?
A. Yes.
Q. And Captain Nicolson is who, do you know?
A. He is one of the executives of the Waterman Steamship Cor- ation.
Q. Who is Mr. Ingram?
A. Mr. Ingram is the port engineer of the Waterman Steam- ship Corporation.

Q. What was your occupation on the "Bienville" on the last trip?

A. I was signed on as fourth oiler but carried out the duties of deck engineer.

Q. And who was your superior, who would be your superior?

A. The first assistant engineer was the man I took orders from.

Q. You took orders from him?

A. Yes.

Trial Examiner SEAGLE. About when did this meeting take place?

The WITNESS. This meeting aboard the ship?

Trial Examiner SEAGLE. Yes.

The WITNESS. I believe it was that morning.

Trial Examiner SEAGLE. About when, what day?

The WITNESS. That was July 6. The both of them were talking on board ship there, amidships about the situation, and Captain Nicolson asked me what we did it for, why did we change, and I told him myself that I changed because I desired the rank and file to rule in the organization, and I believed seamen should be represented by seamen, and he had nothing to say against that. He said a man has to use his own head.

Later on, I talked to Captain Nicolson in the lounge, he and
297 Mr. Ingram were seated there on the "Bienville," and I walked up to Captain Nicolson, and asked him would they take us back when the ship was ready to sail, since he said it was going to be repaired, and he said, "Well, we will be going in two or three weeks——

Q. Was that the first intimation you had that the boat was going to be laid up for the repairs?

A. We did not know the boat was going to be laid up for repairs until we arrived in Mobile.

Q. And who advised you of the fact that it was going to be laid up for repairs?

A. The first assistant engineer.

Q. Did he tell you how long it was going to be laid up?

A. He didn't know.

Q. Will you tell us the custom, Mr. Turner, if any, as to whether or not the officers of the ships select the men to make another voyage?

A. They do; they asked me was I going to make another trip or not.

Q. Did anyone ask you on this last trip?

A. On this trip the first assistant said that they might put a junior engineer on the ship to handle the deck engineer's work, and I said, "That will leave me out," and he said, "No, there is always room for you below in the engine room, and if they do put on a junior engineer on the deck, you could go back to the engine room, oiler in
298 the engine room, as you done before."

Q. How long did you stay on the boat after it arrived in Mobile?

A. We left on that day, the 5th.

Q. Was anything said to you by any officers about leaving?
A. No, sir.
Q. Have you been working for Watermans since?
A. Yes.
Q. When did you go back?
A. I don't remember exactly, about the 23rd or 24th of September I went down there to see Mr. Ingram, I went to see him and asked him what the chances were of going to sea on Waterman's ships, and he said I will have to go back to this—he said the new organization, the A. F. of L. seamen's organization, had taken over the I. S. U., because the I. S. U. was a defunct organization, and I will have to go back to them and take out a book, and I went back there and I got an A. F. of L. book, and I went back down to the state docks and I saw him and told him I had it, and I asked him what the chances were of getting some work in the shore gang on the dock, and he sent me to some foreman there, aboard one of the two ships, the "Arizpa" was one of the ships, and the other one I don't recall, it was a ship on the coastwise service.
Q. Have you worked at all for Waterman since July 6th?
A. I worked five days in the shore gang.
299 Q. And will you tell us the circumstances whereby you were able to work those five days?
A. We got word around the union hall that the men who were on the "Bienville" and the "Fairland" that they wanted them to come down to the docks and work in the shore gang.
Q. Which union hall was that?
A. That was the National Maritime Union.
Q. That was before you changed your book back to the I. S. U.?
A. Yes; and several of us went down there and were put back, everyone of us was put back to work and worked five days, and on a Saturday afternoon we collected three days pay, they held back two days in the week, and about three o'clock in the afternoon the first assistant came around there and I was working on some safety valves on the boilers, and he said, "Well, I got a chance to fire you at last," and I said, "What is that?" And he said, "Well, you can get the rest of your money when you are finished," and I said, "What's the matter, aren't we going to sail the ship?" And he said, "No, not unless you go back to the other place," and I said, "What other place?" And he said, "The I. S. U."
Q. And was it after that conversation that you went back?
A. Yes; long after.
Trial Examiner Seagle. Do you remember when you had this five days' work?
300 The Witness. No; I don't recall exactly, it was in the latter part of December, or September, I mean.
Q. You got five days' work?
A. Yes.

Q. Whom did you see when you got the five days' work in order to get the work?

A. I went down with the intentions of seeing Mr. Ingram, but the first assistant called us with a motion of the hand, and I said, "Bienville?" He said, "Yes."

Q. Who was the first assistant?

A. Mr. Reynolds.

Q. Was he first assistant on the "Bienville?"

A. Yes, sir.

Q. Is there anything else to his title?

A. Yes, first assistant engineer.

Q. Those five days, then, that you worked, that you spoke of, you were working on the "Bienville?"

A. Yes, sir.

Q. And what sort of work were you doing?

A. Working on the safety valves, and repairing pipe lines and steam lines.

Q. And on this Saturday, when you were fired, was that work completed?

A. No, sir; I left work torn down.

Q. And the work that you had been doing, were you capable of doing it?

301 A. Under the supervision of the assistant engineer, who was with me.

Q. Do you know whether the officers on the boat remained on the boat while the boat was in dry dock for repairs?

A. Yes.

Q. They did?

A. Yes.

Q. Do you know how long the "Bienville" was in for repairs?

A. I don't know exactly how long it was in; no, sir.

Q. Do you know about how long she was in?

A. I imagine twenty or twenty-five days.

Q. While you were a member of the N. M. U., did you ever wear your N. M. U. badge or button?

A. Yes, sir; I used to wear it on my cap, on the dock while I was working down there.

Q. Was there anything ever said to you at the Waterman Steamship about wearing it?

A. Mr. Ingram told me I would have to take that Maritime Union button off if I wanted to stay around there, and I took it off, and put it in my pocket.

Q. Have you ever had any complaint against your work, Mr. Turner?

A. Not in the least.

Q. Have you ever had any expressions of satisfaction about your work?

302 A. Yes.

Q. By whom?

A. By the chief engineers on the "Bienville," Mr. Nelson, and by other engineers on other ships, and the discharges say, "Seamanship, character, and ability very good."

Q. Referring back for a moment to the ports out of which you sailed, and your membership in both the I. S. U. and the N. M. U., I will ask you do the unions, all seamen are employed by the company, do the unions consider that there is a vacancy on a boat that they are entitled to fill from their own shipping risks until a member of the crew has resigned?

A. No, sir; they do not consider any vacancy until he has resigned or was discharged for inefficiency.

Q. Then, is it true to state that in the eyes of the crew and in the eyes of the union, that there is—that a vacancy is not created by the mere expiration of articles?

A. No, sir.

Q. You say it is not true to state that?

A. The voyage may be terminated when they terminate the articles, but the man's services is not terminated unless he is discharged for inefficiency or he resigns, leaving the ship of his own accord.

Q. I don't believe you fully understood my question, Mr. Turner. Mr. Reporter, read the question.

(Question read.)

303 The WITNESS. No; there is no vacancy created.

Q. When were you first advised, Mr. Turner, that your employment would not be needed while the boat was in Mobile?

A. After we arrived in Mobile and returned to duty the next morning.

Q. Who so advised you?

A. The first assistant engineer.

Q. Do you remember what he said to you?

Trial Examiner SEAGLE. Was that on July 7th?

The WITNESS. July 6th.

Trial Examiner SEAGLE. July 6th.

The WITNESS. Yes. He said when we got paid off and we finished our day's work we were through, and I asked him who was going to take our places and he said nobody, and I said, "Will we come back to work when you are ready to go again?" And he said, "As far as I am concerned, yes."

Q. Who all was present when that conversation took place, if anyone, other than yourself?

A. I don't recall exactly who was present at that time.

Q. Were other men present?

A. Yes; we were in the machine shop.

Trial Examiner SEAGLE. Did you state the name of the person?

The WITNESS. Mr. Reynolds.

Q. I would like to show you again the list of names in the
304 amended complaint, contained in Board's Exhibit 1, and ask

you if you have an independent recollection as to whether or not any of those men were present?

A. Mr. Wilkerson was present there at the time, an oiler, Herman Lee, a water tender was present. He was trying to get someone to do a watch for him at that time. That is the only two I can recall were present at that particular time.

Q. Mr. Turner, referring back to the five days that you worked on the "Bienville," while it was in Mobile, about how many men were working on the boat?

A. There was at least seventy-five men.

Q. Can you explain, generally, the nature of the work that was being done?

A. General repairs, pipe work, renewing pipe joints, and I was working on the safety valves on the boilers myself.

Q. Is that work which the crew could and ordinarily would have done?

A. Yes, sir.

Q. Now, the day that you were fired from that, were all of those men fired?

A. Yes, sir; that was our last day.

Q. Were all of the seventy-five men fired that day?

A. No, sir; just the N. M. U. men.

Q. How many N. M. U. men were there?

A. I would judge, to my knowledge there was ten.

305 Q. And they were all fired the same day?

A. Yes, sir.

Cross-examination by Mr. McCORVEY:

Q. Mr. Turner, that was while you were working in the shop, wasn't it, working out on the shop?

A. No, sir; I was working aboard the "Bienville."

Q. On the ship, you mean?

A. Under the first engineer, yes.

Q. That was after the voyage ended and the vessel had been tied up for repairs?

A. Yes, sir.

Q. Now, the repairs to the "Bienville" were quite expensive, were they not?

A. Yes, sir.

Q. Do you remember they rebricked the boilers?

A. Yes.

Q. And lifted the turbine casing out for examination?

A. Yes.

Q. And reinforced the thrusts?

A. Yes.

Q. Do you remember they completely rebuilt the crew's quarters?

A. Yes.

Q. And reconditioned the passengers' quarters?

A. I have no knowledge of work on the passengers' quarters.

306 Q. And do you remember they converted the deep tanks in the cargo hold?

A. Yes.

Q. And the boilers were repaired?

A. Yes, sir.

Q. And that work lasted for a period of twenty-seven to twenty-eight days?

A. Around twenty days.

Q. Twenty-seven days, to be exact?

A. I cannot be exact.

Q. Is it your idea while they had this boat tied up for repairs, some of which might have been done by members of the crew, that this crew was still to be employed and paid like other men on the job?

A. They put men in our places to do the work, they hired men to do the work that we were doing.

Q. On these jobs?

A. Yes, sir; they were put to work there.

Q. While she was laid up for repairs?

A. They went to do that work.

Q. And that is after the voyage was over?

A. Yes, sir.

Q. And you were paid off at the time of your discharge, when you signed off before the Shipping Commissioner?

A. Yes, sir; we are always paid off on every voyage.

307 Q. And when you went down there later you were put to work?

A. Yes.

Q. And there was no criticism of what union you belonged to?

A. No, sir.

Q. You knew, did you not, that the Waterman Steamship Corporation had a contract with the Seamen's Union by which it was to furnish men to it?

A. Yes, I found that out.

Q. And you understood that they had to employ men from the I. S. U.?

A. No, sir.

Q. You didn't know that at all?

A. I heard they had a contract?

Q. And you are not familiar with the terms of that contract?

A. No, sir.

Q. Mr. Hoskins asked you about what the customs are when a ship came into port, whether or not the same crew was used when it loaded cargo and went out again?

A. No, sir.

Q. When a ship comes in and lays up twenty-five to thirty days for repairs, does the same custom prevail of keeping the crew on there?

A. That crew has the preference to go back on the boat and sai
that ship.

308 Q. But you have to sign a new contract, you sign new
articles?

A. We also sign new articles for every voyage.

Q. But you used the term "preference." Do you mean you have
the preference?

A. We have the preference; yes.

Q. And didn't you know that the Waterman Steamship Corporation had a contract with the I. S. U. by which they had to give their men the preference? Of course, you knew that?

A. The preference was given by us, by that I mean the men in the crew had the preference to go on their respective jobs when the ship was ready to sail.

Q. And you had to have new articles?

A. I beg your pardon?

Q. You had to sign new articles?

A. We always had to sign new articles for each voyage.

Q. And when your voyage is over you sign a release?

A. Yes.

Q. And you sign a release for the United States Shipping Commissioner?

A. Yes, sir.

Q. And at that time your contract is ended?

A. Yes.

Q. Unless you went out on another voyage?

A. Yes, sir.

309 Q. When this man told you of the N. M. U., when he spoke to you men at Tampa, did he tell you that the International Seamens Union was about to quit and the offices in Mobile were closed and that the only way out for you and the other members of the crew was to joint the N. M. U.?

A. No, sir.

Mr. Hoskins. I object to the question and move that the answer be stricken from the record. It is irrelevant.

Trial Examiner Seagle. Motion granted. I have already ruled on that.

Mr. McCorvey. Respondent asks an exception.

Q. Are you a member of the I. S. U. now?

A. No, sir; not the I. S. U., the American Federation of Labor Seamens Reorganization Committee.

Q. That was formerly the I. S. U.?

A. Yes, sir.

Q. Are you a member of the N. M. U.?

A. No, sir.

Q. You are not a member of the N. M. U. now?

A. No, sir.

Q. This reorganization committee you speak of, they put on men in regular rotation, don't they?

A. Rotation list, full rotation, you mean?
Q. Yes?
A. Yes.
310 Q. And you come on for work when your number is reached, do you not?
A. Yes, sir.
Q. In other words, you are not barred from working on the Waterman boats, are you?
A. As far as I know, I am not, until I get my number on that list.
Q. In other words, this reorganization committee that you are speaking of, that was the old International Seamen's Union with which the Waterman Company had this contract?
A. Mr. Ingram told me that the I. S. U. was a defunct organization, and he said that there was a new organization now headed by Mr. Green of the American Federation of Labor.
Q. And they took over the I. S. U.?
A. Yes.
Q. And the I. S. U. is affiliated with the American Federation of Labor?
A. Yes.
Q. And did you know that they had a contract, or they took over the contract with the Waterman Company that the I. S. U. had?
A. No, sir.
Q. But your understanding is that you are numbered or you can get employment whenever your name is reached in regular rotation?
311 A. Yes, sir.
Q. Mr. Turner, just to refresh your memory, didn't you work in different jobs on this ship from July 8th to the 14th?
A. I worked five days, but I don't recall the exact dates.
Q. And didn't you go back to work the following week from the 15th of July to the 21st?
A. No, sir; I only worked five days.

By Mr. Howard:

Q. Mr. Turner, how long have you been going to sea?
A. My first trip was in the year 1920.
Q. And you have been going regularly ever since?
A. No, sir.
Q. During all of the time that you have been to sea, most of the shipping has been done by members of the union; is that right?
A. No, sir.
Q. Well, during the time that you were connected with the union, hasn't it always been true, since you followed the sea, that the union was working under a contract with the steamship owners?
A. I was told that.
Q. The unions to which you have belonged have always respected those contracts that they made, haven't they?
A. I imagine they have.

312 Q. Do you know of any reason that you could suggest to the National Labor Relations Board by which the Waterman Corporation could have abandoned or broken its contract with the International Seamen's Union in order to give you a job?

Mr. Hoskins. I object to that.

Trial Examiner Seagle. Sustained.

Mr. Howard. Exception.

Q. It is your idea, is it not, Mr. Turner, that after the sailor returns from a foreign voyage, and completes his contract under the ship's articles and is paid off and discharged before the Shipping Commissioner, that the obligation still obtains on the part of his employer to keep him on the ship; is that right?

A. What you mean is the employer is obligated to keep me on the ship?

Q. Yes.

A. Not necessarily.

Q. What is it that he owes to you after he pays you off and discharges you and you have finished your contract and gotten your money; what is it that you can explain to the Examiner; what right do you claim exists by which you have preference on that ship?

A. If my services are satisfactory and my work is efficient, I have the right to stay on that ship, if I have not done anything to be
313 discharged for. Why shouldn't I make another trip?

Q. You have the preference if you wish to stay on that ship, even though the N. M. U. and the I. S. U. have the practice of taking the ship by rotation. In other words, if you leave the ship, before you got a new job by the system of rotation, you have the preference to stay on that ship even then. You have the preference, is that the way you understand it?

A. It has always been the port rule that if a man don't register in at the Union Hall that he still has the preference to go off on that ship when it is ready for service again.

Q. You have the idea that the steamship operator owes him that preference so he don't have to come in on the rotation list; is that right?

A. Yes.

Redirect examination by Mr. Hoskins:

Q. You are now a member of the I. S. U.?

A. The A. F. of L. Seamen's Reorganization Committee.

Q. And the reorganization committee represents that they have taken over the I. S. U. contract. Is that the way you understand it?

A. Yes.

Q. You said that the reorganization committee at the present time has shipping lists?

A. Yes.

Q. If they vote upon which reorganization committee seamen
314 are now employed comes back into Mobile, and the boat is laid up, we will say, in drydock for repairs, and the men

are not kept on the boat, does the Reorganization Committee, the Seamen's Reorganization Committee, consider those jobs vacant?

A. No, sir.

Q. The Seaman's Reorganization Committee recognizes the custom that those men still have the job?

A. Yes, sir.

Q. And that custom is recognized or was recognized by the I. S. U.?

A. It was when I was there.

Q. And isn't it true that every seaman still considers he is employed until he actually resigns or is fired for cause?

A. Until he resigns or is fired for cause or puts his name on the shipping list.

Q. And that shipping list is the custom——

A. (Interrupting.) A port rule in the union; yes.

Q. In your cross-examination you referred to the termination of liability to the company and the termination of the rights of the seaman by the termination of the articles. Am I correct in understanding you to refer only to the termination of rights and duties under those articles?

A. Under the articles.

Q. Did you intend to convey any impression there that the employment of the seaman was terminated by the mere expira-
315 tion of those articles?

A. No, sir.

Q. Is it true to state that a seaman's job is still existent, although he may not be drawing pay while the boat is tied up for repairs?

A. Yes, sir.

Q. There is no vacancy in his job?

A. No; there is no vacancy. When I first shipped on the "Arizpa," the men who wanted to go back on that ship, when she was ready to go out, got back, when I took the job for the first time as oiler for the reason there was vacancies.

Q. But if a man is signed up on a ship and he hasn't been kept actually working, what is the custom of the company in keeping that man informed when the boat is ready for commission?

A. I have known the engineer or the first assistant to tell the men to come back, but as a general rule we know *ehn* a ship is about to go out and—we know that much.

Q. Is it incumbent upon the men to go down to the docks day after day to see if the ships are ready?

A. Yes; I went down myself several times.

Q. When the "Bienville" was placed to commission were you called by the first assistant?

A. No, sir.

By Trial Examiner Seagle:

Q. Did you apply to the Respondent for the shore gang
316 work, or were you called by the company?

A. I went down there because I was told by some of my fellow union workers that they wanted men, the men who were on

the "Bienville" and the "Fairland" to come down *ht*ere, that they were going to give them work, and I did not know it to be a fact, and I went down and talked to the first assistant engineer, he called me over and told me to get on my boat, to get aboard, and I said "Bienville"? And he said, "Yes; report to the second assistant," and I reported and I worked five days to my knowledge.

Q. Do you remember how much you were drawing at that time?

A. Three-twenty a day.

Q. Three-twenty a day?

A. Yes, sir; for eight hours, forty cents an hour.

Q. What was your pay when you were employed as a member of the crew on the "Bienville"?

A. Eighty-two fifty a month.

Q. And I understand you have not worked on any other boat but the "Bienville"?

A. No, sir; I worked only five days from the 6th of July up 'til today.

Q. Do you desire to be reemployed by the Waterman Steamship Corporation?

A. Yes, sir.

Q. When did you join the International Seamen's Union or
317 the Reorganization Committee?

A. The Reorganization Committee?

Q. Yes.

A. I believe it was the 24th of September. I have the record here if you let me refer to it.

Q. I wish you would.

A. September 24th.

Trial Examiner SEAGLE. That is all.

Redirect examination by Mr. LUSTIG:

Q. You exchanged your N. M. U. union book for and I. L. A. or I. S. U. book?

A. An A. F. L. book.

Q. Solely for the purpose of being reemployed by the Waterman Steamship Corporation?

A. Yes, sir; I wanted to go back to work.

Q. And you were told that the only condition upon which you could get reemployment would be if you did change from the N. M. U. to the I. S. U.?

A. Yes.

Q. And you were told that by an official of the Waterman Steamship Corporation?

A. Yes, sir; by the port engineer.

Recross-examination by Mr. HOWARD:

Q. Assuming that you were reemployed by the Waterman
318 Steamship Corporation, do you know what fixes the wages and the assignments on the ships of the Waterman Steamship Corporation?

A. I beg your pardon?

Q. Do you know how the rate of wages is fixed between the men, the members of the crew and the Waterman Company?

A. There is supposed to be an agreement drawn up between the officials of the Waterman Steamship Corporation and other steamship companies and the representatives of the union organization.

Q. As I understand it, you belonged to the National Marine Union. Do I understand, or do you understand that there is no agreement shown that you are to be reemployed, or what you would expect your rate of wages to be, that you are entitled to have? Now that you became affiliated with the International Seamen's Union, you would get the benefits of the contract that they had with the Waterman Steamship Line, wouldn't you?

A. I just stated that I am a member of the A. F. of L. Reorganization Committee and not of the N. M. U.

Q. And the rate of wages which you seek to obtain, as a member of the Reorganization Committee, is that fixed by the contract between the Waterman Steamship Corporation and the International Union——

Mr. HOSKINS. Mr. Examiner, I object to this entire line of testimony.

319 Trial Examiner SEAGLE. Objection sustained.

Any further questions of this witness?

(No response.)

(Witness excused.)

Trial Examiner SEAGLE. I wish to say I have heard so much about this contract between the Waterman Steamship Corporation and the I. S. U., that I have developed a great deal of curiosity, and I am wondering whether it would not be the proper thing now to produce the document. Numerous features were discussed regarding its terms, without knowing what the contract provided. Do you intend to offer a copy of the agreement, Mr. Howard?

Mr. HOWARD. I would be glad to offer it.

Trial Examiner SEAGLE. There wouldn't be any objections to departing from the normal procedure, would there?

Mr. HOSKINS. No; but I do have certain points which I want to bring out when the contract is produced.

Trial Examiner SEAGLE. Well, I don't think that that would bar you from bringing out anything relevant.

Mr. HOSKINS. I have no objection to its admissibility.

Mr. MCCORVEY. I have a copy. This is a copy of the original signed, it is a contract between the International Seamen's Union of America and the Seagoing personnel Committee of the Atlantic and Gulf shipowners on behalf of the shipping companies.

320 As I say, it is an exact copy of the original now in force. Now in force between the I. S. U. and the Waterman Steamship Company.

Mr. LUSTIG. As this time I want to raise objection as to the form of the contract that is being introduced——

Trial Examiner SEAGLE. Well, the contract has not been offered yet, as far as I understand it.

Mr. LUSTIG. It is not an original, but a printed form and we are to presuppose that there is an original. As signatory to a contract which is supposed to be in existence between the union and the steamship companies, among them the Waterman Steamship Corporation, I presume they should have a copy of the original executed.

Mr. HOSKINS. May I ask when this contract was executed, Mr. McCorvey?

Mr. MCCORVEY. They are renewed from year to year, but this contract is signed on March 9, 1936, and there was an amendment made in 1937, which is on page 3, the schedules of wages to be paid.

Mr. HOSKINS. Then, do I understand you correctly as saying that this contract as it now stands was made on February 3, of this year?

Mr. MCCORVEY. No; I said that there was an amendment on February 3, 1937, and the only change is in the schedule of wages. Now, the whole contract was made earlier than that.

321 Mr. HOSKINS. Is it true that the contract we are now considering is dated this year?

Mr. MCCORVEY. No; the amendment was made as to the wages in 1936.

Trial Examiner SEAGLE. But when was that contained in the contract we are now talking about?

Mr. MCCORVEY. All but the existing wages was made in March 1936, but on February 3, 1937, there was an increase in the wages as shown in the schedule.

Mr. HOSKINS. Do I understand we are now talking about a February 1937 contract?

Mr. MCCORVEY. I am merely offering this at the suggestion of the Trial Examiner.

Mr. HOSKINS. Mr. Examiner, if you please, I have no objection to the admission of the contract, but I do want the record to show clearly, and to have the parties clearly understand my position. I do not want to be understood as permitting this copy to be offered as an exhibit, as admitting in any degree that that contract constitutes a defense to the allegations of the complaint.

Trial Examiner SEAGLE. I don't believe that there is any such thought on anyone's part. The contract is being offered now as an agreement that was made between the Respondent and the International Seamen's Union.

Mr. HOSKINS. May I have an opportunity to make my posi-
322 tion entirely clear on the record?

Trial Examiner SEAGLE. Yes.

Mr. HOSKINS. My reason is that the election, in which the I. S. U. participated, the Board specifically stated that the I. S. U. in petitioning for that election has waived its rights to assert the existence of such contracts as a bar to the election.

The Board stated: "By filing these petitions we believe the I. S. U.
s waived its rights to assert the existence of these contracts as a
r to elections."
The Board further stated on September 11, I think, something to
e effect that—
Trial Examiner SEAGLE. Yes; I am well acquainted with the sup-
ements to the decisions since I have had an opportunity to read
em. I believe you also quoted from them this morning.
Mr. HOSKINS. I am merely quoting it again with reference to this
mplaint.
Mr. MCCORVEY. We have no objection to the election. The only
ntroversy we have is in forbidding the men to go aboard our vessels
they can have the elections. We want to know what is going on
our ships—
Mr. HOSKINS. Since the I. S. U. did file a petition in this proceed-
ing for an election, and since the Board rules that they waived
3 their rights, they must necessarily have waived their rights
under the contract, and if the Board and if the Examiner
lds contrary, then, I still say that our position is that the contract
no defense, because the contract specifically provides, in Article
Section 1, as stated in the Respondent's answer, that the Inter-
tional Seamen's Union, that members of the International Seamen's
nion should be given preferences when vacancies occur, and it con-
ins this expression—"Provided, however, that this section shall not
construed to require the discharge of any employee who may not
sire to join the union."
With that express proviso in there, I think it should be clearly
ident that the contract is no defense to the allegations of this
mplaint——
Trial Examiner SEAGLE. I do not intend to rule now on whether
not the contract constitutes a defense in the case. However, I
ink I will admit the contract in evidence and it will be Respondent's
hibit 14.
(Thereupon the document above referred to was received in evi-
nce and marked "Respondent's Exhibit No. 14.")
Mr. LUSTIG. May I ask whether the contract is being admitted in
idence or is marked simply for identification?
Trial Examiner SEAGLE. It is admitted in evidence.
Mr. LUSTIG. Well, I object to the admission of the contract in
evidence, because no evidence has been offered by the Re-
4 spondent as to the execution date, the date of execution of this
contract. I think that that is a material and important thing,
d we should have the date on which the contract was executed.
Trial Examiner SEAGLE. Does not the contract give the date?
Mr. LUSTIG. Yes; it is dated March 9, 1936, but I understand that
ere is an amendment to it, and amendment by which the wages
re increased——
The shipping companies, on whose behalf this agreement is signed,
detailed, but I do not see the Waterman's name there——

Mr. McCorvey. It is right there [indication].

Mr. Lustig. Yes; and underneath it says "Waterman Steamship but above there is this paragraph, stating the following:

"The following companies are also parties to the above agreement officially signifying their desire to participate shortly after the document was signed by the Commission."

That language is very ambiguous to me and I don't know whether the company would consider itself bound by it.

Mr. McCorvey. Both the Waterman Steamship Corporation and the Pan-Atlantic consider themselves bound.

Trial Examiner Seagle. Mr. McCorvey, I observe from the face of the agreement it reads as follows: "The agreement with
325 Atlantic and Gulf Steamship companies," and set forth the dates on which various agreements were made. The first line reads: "effective as of January 1, 1935."

Mr. McCorvey. What page is that on?

Trial Examiner Seagle. Well, it would be the first part of the agreement and folded up.

Mr. McCorvey. Page 1 at the bottom?

Trial Examiner Seagle. Well, it would be page. I take it that this agreement abrogates any agreement which was in existence as of January 1, 1935, and this speaks of an agreement as of March 1936——

Mr. McCorvey. That is right, we had another agreement in 1935.

Trial Examiner Seagle. And it is no longer in effect.

Mr. McCorvey. No, sir.

Trial Examiner Seagle. That was canceled by this agreement?

Mr. McCorvey. Yes. This agreement was entered into the 9th day of March 1936, and several amendments were made after that, but they affected only the schedule of wages.

Trial Examiner Seagle. Mr. Lustig, however, points out that on page 7 it is stated that some of the companies did not participate until after the document was signed by the committee, and among the companies listed under that statement is the Waterman Steamship Corporation. Now, can you state when you became bound by this agreement?

326 Mr. McCorvey. In March 1936. March 16 is the exact date. I will prove all of that when I come to putting on my testimony, your Honor.

There is one thing, one other thing that I would like to take up, and that is an amendment to our answer. I find I was in error in stating just what the agreement was, as to the terms upon which other people were allowed to go on board our ships, and I would like to present the facts at this time through an amendment to my answer, which I would like to file.

Trial Examiner Seagle. What is the amendment?

Mr. McCorvey. I will read it to you.

"Comes the Waterman Steamship Corporation, and amends the answer heretofore filed by it to the amended complaint in this proceeding in the following particulars:

"'(2) By adding just following the words "while at work" where the same appear in the eighth line from the bottom of Page 7 of the answer to the amended complaint and just before the words "This respondent further", where the said words appear in the seventh line from the bottom of Page 7 of the answer to the amended complaint, the following:

"'This respondent further respectfully shows unto the National Labor Relations Board that under date of July 13th, 1937, this respondent addressed and delivered to the masters of all of its
327 vessels the following order and regulations:

"'To All Masters:

"'In view of the fact that the National Labor Relations Board are now holding elections to determine whether the N. M. U. or the I. S. U. should represent the unlicensed members of our crews in collective bargaining, we have decided that we will not allow any delegates from either union to board our vessels for the purpose of soliciting memberships.

"'(Signed) N. Nicolson,
"'N. Nicolson,
"'NN/L. *Executive Vice-President.*

"'This respondent further shows unto the National Labor Relations Board that on May 12th, 1937, it addressed and delivered to William Ross, Agent for the International Seamen's Union, at Mobile, Alabama, a letter containing certain regulations, which letter reads, as follows:

"'Mr. Wm. Ross, *Agent*,
"'*International Seamen's Union, Mobile, Alabama.*

"'Dear Sir: In view of the fact that the National Labor Relations Board is now holding an election to determine whether the
328 N. M. U. or the I. S. U. should represent the unlicensed personnel of our vessels at collective bargaining, we have decided that until that election is held we will not allow members from the N. M. U. or your organization on board our vessels for the purpose of soliciting membership.

"'Kindly acknowledge receipt.

"'Yours very truly,
"'Waterman Steamship Corporation,
"'N. Nicholson,
"'*Executive Vice President.*

NN/L.

"'This respondent further shows unto the National Labor Relations Board that the only purpose for which the representatives of the International Seamen's Union of America were allowed to go on board the ships of this respondent was for the purpose of collecting dues, and this respondent further respectfully shows unto the Na-

tional Labor Relations Board that upon receipt of respondent's letter of July 12th, 1937, William Ross, Agent, addressed to Capt. Nicolson a letter reading in words and figures as follows:

"'INTERNATIONAL SEAMEN'S UNION OF AMERICA,
"'AFFILIATED WITH THE A. F. OF L.,
"'MOBILE BRANCH, *55 South Conception Street*,
329 "'JULY 14TH, 1937.
"'CAPTAIN N. NICOLSON,
"'*Executive Vice President*,
"'*Waterman Steamship Corporation*,
"'*Merchants National Bank Building*,
"'*Mobile, Alabama.*

"'DEAR SIR: This will acknowledge the receipt of your letter dated July 12th, 1937.

"'In reply I would state that passes issued to the Agents and Delegates of the International Seamen's Union of America have not been used for the purpose of soliciting memberships. Our Agents and Delegates board ships only in line with their duties to contact members of the International Seamen's Union of America, collect dues, and attend to matters relative to the work and agreements existing.

"'The Election to be held under the National Labor Relations Board supervision does not in any way affect the agreements in force between the Steamship Companies and the International Seamen's Union of America.

"'Yours Respectfully,
330 "'(Signed) WILLIAM ROSS, *Agent*.
"'WATERMAN STEAMSHIP CORPORATION,
"'By (Signed) N. NICOLSON,
"'*Executive Vice President, Respondent.*
"'STEVENS, MCCORVEY, MCLEOD, GOODE & TURNER,
"'By (Signed) GESSNER T. MCCORVEY,
"'*Attorneys for Respondent.*

"'Subscribed and sworn to before me this 2nd day of November 1937.

"'(Signed) MYRTLE E. HASSETT,
"'*Notary Public, Mobile County, Alabama.*'"

Trial Examiner SEAGLE. Is there any objection to that amendment?

Mr. LUSTIG. I object to that on the ground that there have been numerous amendments. The pleadings seem to have been well drawn, and this defense seems to come as an afterthought, as an amplification of the defense, and it takes this respondent, the National Maritime Union, by surprise.

Trial Examiner SEAGLE. Well, if the answer is merely an amplification, I don't see how it can take you by surprise. You state in effect that it does not add substantial new matter.

Mr. LUSTIG. It does introduce new matter. The pleading, as claimed by the Respondent, covers the point required in the introduction of new evidence, and it is unwarranted.

Trial Examiner SEAGLE. Do you wish to be heard on the motion, Mr. Hoskins?

331 Mr. HOSKINS. I should like to Mr. Examiner, yes sir.

I object to the granting of the amendment at this time upon the ground that in the answer originally filed, and upon the Board's case was prepared, the Respondent admitted that it had denied passes to the National Maritime Union and had granted admissions to its boats to the I. S. U., and our case was built upon that understanding.

I further object on the ground that it is immaterial and has no relevancy at the present time, as to the purpose for which they permitted the I. S. U. representatives to come on board. The fact is that the Respondent admits that the I. S. U. were admitted on board and the representatives of the National Maritime Union were not allowed on board.

Trial Examiner SEAGLE. I believe that that is true. It is still your position that representatives of the I. S. U. will be permitted on board for the purpose of collecting dues?

Mr. MCCORVEY. Yes. May it please your Honor, I just want to make this suggestion. I did not want to make my answer and file it such a way as to put the gentlemen to a disadvantage, but my idea is that in the original answer I alleged that admittance to the vessels granted to the I. S. U. was "Subject to regulations prescribed by the Respondent," and I was going to prove by witnesses what the

332 terms and conditions were.

Trial Examiner SEAGLE. The objections are overruled and the answer will be deemed amended as indicated.

Mr. MCCORVEY. Mr. Examiner, I read this amendment, and I would like to have it marked by the reporter as an amendment to our answer.

Trial Examiner SEAGLE. It will be admitted in evidence as Respondent's Exhibit 15.

(Thereupon the document above referred to was received in evidence and marked "Respondent's Exhibit No. 15.")

E. J. PELLETIER, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. HOSKINS:

Q. Will you state your full name, please, Mr. Pelletier?
A. Edmond Joseph Pelletier.
Q. How do you spell your last name?
A. P-e-l-l-e-t-i-e-r.
Q. And what is your address, Mr. Pelletier?
A. 162 South Royal Street, Mobile.

Q. What is your occupation, Mr. Pelletier?
A. Seaman.
Q. In what capacity?
333 A. Chief Steward; chief cook.
Q. How long have you been going to sea?
A. Since 1918.
Q. Will you name, please, a few of the ports from which you signed articles and out of which you sailed?
A. New York, Boston, Baltimore, Savannah, and Mobile.
Q. And a few of the lines on which you sailed?
A. American Export Lines, Munson Steamship Line, and Pennsylvania Shipping Corporation.
Q. Have you ever sailed for the Waterman Steamship Corporation?
A. And the Waterman Steamship Corporation.
Q. When did you first sail for them, do you remember?
A. 1934.
Q. Do you remember the name of that boat?
A. The "Maiden Creek."
Q. What was your position on that boat?
A. I was chief cook.
Q. And have you sailed on any other Waterman boats?
A. I have sailed on the "Fairport," the S. S. "Fairport."
Q. How many trips did you make on that?
A. I made two trips on the S. S. "Fairport."
Q. And what was your occupation on that boat?
A. Chief steward.
Q. Have you sailed on any other Waterman boats?
334 A. On the S. S. "Yaka."
Q. And what was your occupation on that boat?
A. Chief steward.
Q. Is that all, or did you sail on anymore?
A. And I was on the "Bienville."
Q. When did you go on the "Bienville"?
A. I went on the "Bienville" February 16th.
Q. What year?
A. 1937.
Q. What was your occupation on that boat?
A. Chief cook.
Q. How many trips did you make on that boat?
A. I made two trips.
Q. And what was your occupation, was it the same on both trips?
A. No, sir; on the second voyage I was chief steward, too.
Q. Now, will you tell the Examiner, briefly, what the duties of the chief steward are?
A. Well, the chief steward, he sees that all of the food——
Trial Examiner SEAGLE. If I may interrupt. I understand the Respondent is not questioning the competency of the employees. In

view of that fact, I do not understand that this testimony is relevant. Is that correct?

Mr. McCorvey. No; we are not questioning the competency. The only way it comes out, Mr. Pelletier brought a suit against the Waterman Steamship Corporation under this contract, and we
335 did question his competency in that suit. That is correct. We don't want to make a statement that is not correct.

Trial Examiner Seagle. You did not plead that in your answer.

Mr. McCorvey. No, sir; he is not a party to it at all, except he is named as one of the seamen.

Trial Examiner Seagle. As far as the present proceeding is concerned, you do not question his competency as either steward or cook while in your employ.

Mr. McCorvey. He was discharged on account of incompetency. He is probably——

Trial Examiner Seagle. Is that alleged in your answer?

Mr. McCorvey. No, sir; it is not.

Trial Examiner Seagle. Well, you are bound by your answer.

Mr. McCorvey. I will not make any admissions as to his competency. Another steward was put in his place because his services were not satisfactory. This particular witness——

Mr. Hoskins. That is not so alleged in the answer.

Trial Examiner Seagle. There is no such allegation in your answer, and I have already stated you are bound by your answer.

Mr. Hoskins. To the contrary, the only reason is that these crews did not sail because they were not members of
336 the I. S. U.

May I explain that I was going into his duties merely to show that he had a supervisory capacity over some of the other men named in the complaint.

Trial Examiner Seagle. Well, that is not important in this proceeding.

Mr. Hoskins. It is important to this extent, I believe. The witness is prepared to testify that the instructions as to dismissals in his department were given to him to be relayed to the men under him.

Trial Examiner Seagle. I see, very well.

Q. My last question, then, Mr. Pelletier, was asking you to explain briefly to the Trial Examiner the duties of the chief steward.

A. The chief steward is supposed to make out the bill of fares, and to see that the cooks do their work and to keep the ice-box and the chill room, to see that the temperatures are kept right.

Q. Now, as chief steward, did you have any men working under you on the boat?

A. Yes, sir.

Q. What class of men are those?

A. Waiters and cooks and mess men.

Q. What is the meaning of mess men?

A. A mess man is a man on board a ship who waits on,

Q. Is that the same as a waiter?

A. Yes.

Q. What is a mess boy?

A. A mess boy takes care of the crew's, serving on the table.

Q. And the men under those two categories were working under you?

A. Yes, sir.

Q. Mr. Pelletier, I ask you, and I want your answer based on your experience from the ports from which you have sailed on the lines upon which you have sailed, to state what, if any, is the custom as to whether a crew remains at work when the ship upon which they have just completed a voyage lands at its final ports and prepares to make ready for another voyage?

A. Well, sir, when we come in from a voyage we are automatically paid off on our articles and then, if we are competent, and no one tells us we are fired, we stay aboard the ship until such time as we sign articles again for another voyage, and on some trips it is two or three days.

Q. And were you paid for those two or three days?

A. We are paid and we have subsistence.

Q. And have you some duties to perform?

A. We have the same duties to perform then as while we
338 are on the voyage.

Q. Is that the usual custom?

A. Yes, sir.

Q. Now, I ask you what is the custom, and I recognize that you can probably only speak with reference to the steward's department, I suppose?

A. Yes.

Q. What is the custom as to whether or not the crew is kept at work when the boat is put in dry dock or tied up for repairs for a few days, when, in either case, it is to sail on another voyage?

A. All those members who did not quit, or were fired, that come to my knowledge, and I have been told that they stand by the ship.

Q. What do you mean by "stand by?"

A. They have to do their work and get paid for it by the Waterman Steamship Corporation.

Q. Are you a union man?

A. Yes, sir.

Q. What is your experience as to whether or not the unions recognize and sanction this custom?

A. It has been a port ruling that all men who have not been fired from the ship or quit, that they automatically hold their job on the ship.

Q. Now, when you speak of being fired, do you distinguish
339 between the expiration of articles and being fired for cause?

A. That is what I mean to say, being fired for cause.

Q. You don't mean the mere expiration of articles?

A. No, sir.

Q. Does anyone consider the mere expiration of articles as a termination of employment?

A. No, sir.

Q. Does the union consider that there is a vacancy on that particular boat until the man has resigned or until he has been fired for cause?

A. No, sir.

Q. Now, you said—have you ever been a member of the I. S. U.?

A. Yes, sir.

Q. When did you join the I. S. U.?

A. Well, I am not quite sure, but I think it was in 1934 or 1935.

Q. About 1935?

A. 1935, to be sure.

Q. Were you a member of the I. S. U. when you made this second trip on the "Bienville," that you have told us about?

A. Yes, sir.

Q. And while you were a member of the I. S. U. on that boat, do you know whether the I. S. U. representatives were permitted to come on board?

A. At all times.

340 Q. Were they permitted to contact the men?

A. Yes, sir.

Q. Was there anyone from the company accompanying these I. S. U. representatives to see that they only collected dues?

A. No, sir.

Q. There was no one to see that they did not do any organization work?

A. I do not recollect seeing anyone with them.

Q. Do you know whether or not I. S. U. representatives solicited members while they were on board?

A. I could not say.

Q. You say you could not say?

A. I am not positive.

Q. Well, as a matter of fact, the entire crew, prior to the events which have already been testified about by other witnesses, the entire crew were I. S. U. members, weren't they?

A. On the start of the voyage?

Q. Yes?

A. As far as I know, they were.

Q. In other words, as far as you know there would be no occasion for the I. S. U. to come on and do organization work, is that correct?

A. Yes, sir.

Q. Now, have you ever belonged to the N. M. U.?

A. Yes.

341 Q. When did you join the N. M. U., Mr. Pelletier?

A. In July, around the 2nd; the 1st or the 2nd.

Q. In what year?

A. 1937.

Q. Where did you join?

A. Tampa, Florida.
Q. At Tampa, Florida?
A. Yes, sir.
Q. Who signed you up, do you know?
A. Mr. Bennett.
Q. And where did this take place?
A. It took place down in the crew's messroom.
Q. And after you signed up into the N. M. U. was anything said to you by the officers of the ship, or any of the agents of the company, about your affiliation with the N. M. U.?
A. After we arrived into Mobile there was.
Q. Will you tell the Trial Examiner what took place there?
A. Well, the port steward, Mr. Fagan, came aboard to collect the books, the requisition books, and the accounts of the slop chest from me; that means, for the seamen's cigarettes and things——
Q. That is referred to as the slop chest?
A. Yes, sir, on board the ships; ship's language.
Q. Have you identified Mr. Fagan?
A. Yes, sir.
342 Q. Who is he?
A. He is the port steward.
Q. Will you tell us, please, what his relationship is to the steward on a boat?
A. He hires the stewards and notifies them when he has a ship for them.
Q. You say he notifies them when he has a job for them?
A. Yes, sir.
Q. Aren't the stewards hired through the union halls?
A. No, sir; we have to be a member of the union, but we are not hired through the hall.
Q. The port steward calls you to work, is that right?
A. Yes, sir.
Q. You say he came on board?
A. Yes, sir.
Q. When?
A. About nine o'clock in the morning, and he asked me how the trip was and I told him everything went along fine, only the usual beefs that there is from the crew.
Q. What do you mean by "beefs"?
A. Well, fellows want this, and want that, and sometimes we haven't got it, and it is up to the steward to tell them so and to try to straighten everything out.
Q. All right, will you go ahead and tell us what transpired?
A. Then, he asked me "Has your crew gone all N. M. U."?
343 And I said, "Yes," as far as I knew they had all gone N. M. U. and I had seen them change; then, he asked me if I had turned N. M. U. and I said "Yes," and then he says, "Well, I have got orders to lay you all off." While in the room he asked—we had some talk about the overtime slips, and he thought the amount of overtime was

very high, and he left my room to see the captain about it, and I followed him out, and while there the captain said, "Well, the steward okehed it," and I had nothing to do, but orders from the union to okeh all overtime. "Well," he said, "We will pay it, but we will fire them all." Well, on that suggestion of hearing Mr. Fagan saying that after we were paid off in the afternoon, why, I told the crew, some of the members under me, that they were all fired.

Q. You told them that in your capacity as the chief steward, is that right?

A. Yes, sir.

Q. Do you remember the names of those whom you told that, Mr. Pelletier?

A. Yes.

Q. I show you Board's Exhibit 1, which contains, under the heading "S. S. Bienville," the names of the crew whom it is alleged were discriminatorially discharged. I will ask you if you'll consult that and after refreshing your recollection from that tell us to whom you conveyed that statement?

A. To Mr. Morrown, Mr. Reynolds, Mr. Lpez, and to Mr.
344 Schueddner. That is about all.

Q. Were those men all working under you?

A. Under me.

Q. What took place; if anything, after this conversation you just related?

A. Mr. Fagan went ashore, and about two o'clock, one-thirty or two o'clock, a steward by the name of Mr. Black came aboard, he was an ex-steward on the line, he came aboard the ship and we had a conversation, and he told me he was on vacation and he got a telephone message from Mr. Fagan to come down and board the ship.

Q. Go ahead.

A. Well, we paid off, and after we paid off he paid all of the overtime to all of the other men of the crew, and I was the last man to get paid, and he refused to pay my overtime, and I told him I would sue about it, which I did, and I got a judgment for it.

Q. Did you have any other conversation with Mr. Fagan about your position?

A. Well, he came aboard about three o'clock.

Q. What took place then?

A. He asked me for my keys and he turned them over to Mr. Black and put him in charge.

Q. Did you surrender all the keys at that time?

A. Yes, sir.

345 Q. Do you know how long Mr. Black stayed on as chief Steward?

A. I am not positive. It must have been about a week or more.

Q. Now, do you know, with reference to your regular crew, do you know whether they were replaced by anyone at that time?

A. Well, I heard that there were several I. S. U. men down there working under Mr. Black, painting out the room.

Q. You don't know that of your own knowledge, do you?

A. I know only one. I don't know his full name. Freddie, he was down there doing painting work.

Q. Were you given any employment at all by the company after the boat docked and after you were relieved of your keys and duties?

A. No, sir.

Q. Have you been down there at all to see about getting a job?

A. I have not been down to the dock, but I have been up to the office after the trial on my overtime was settled. In fact, I got a judgment from Judge Stewart, and I went up to see if they would pay it, and he said he will appeal the case and take it up to the Supreme Court before I got a nickel.

Q. Was there any conversation with reference to your going back to work?

346 A. No; I did ask him if I could go back to work, and he asked me "Why did you join the N. M. U. for?" And then I told him, why, I did not like the attitude of the officers of the I. S. U. in New York, and I gave him my reasons.

347 Q. Have you asked anyone down there for your job since then?

A. No, sir.

Q. Since you were laid off?

A. No, sir; not at that meeting, but later on.

Q. You say later on you did ask for your job?

A. Yes.

Q. When was that?

A. I was down there October, about October 1st.

Q. Who did you see at that time?

A. I seen Mr. Nicolson.

Q. And what was the conversation?

A. I told him I was willing to drop the overtime suit if he would reinstate me back in the company. I wanted to work. And he says "Why, you are not using that to blackmail me for a job," and I said, "No, I will drop it anyway, regardless of whether you give me a job or not," and he said, "You cannot very well fight a company this size for your overtime," and I said, "That is one reason why I am dropping the case," and he said, "I will let you go back to work," and he said, "It was brought up by another party," that I would have to go back to the union hall and get reinstated there.

Q. When you say "By another party," by whom do you mean?

A. By Mr. Gamile.

Q. And have you subsequently gone back to the I. S. U. or

348 the Seamen's Reorganization Committee?

A. Yes; I went back then and joined back on October 5th.

Q. You joined back October 5th?

A. Yes, sir.

Q. Is your name at the present time on one of the ships' list over there?

A. Yes, sir; on the next list.

Q. And have you been down there since then, to the offices of the Waterman Line, to advise them that you joined the I. S. U.?

A. Yes; I went there one morning at 7:30, and the only man in the office was Mr. Fagan, and I told him I was sorry for causing him any grief over the overtime; I thought I had it coming and was fighting for it, and I had to work, and he said, "I was under orders. I did not mind paying you the overtime, but I am under orders," and he asked me if I was fixed up with the Union, and I told him yes, and he asked me how far I was up on the list, and I said about seventh or eighth man, and he said, "It won't be long now before you go to work," and I thanked him and bid him good morning.

Q. What was the salary you made on your last trip on the "Bienville," Mr. Pelletier?

A. $130 a month.

Q. And did you get all subsistence on top of that?

A. Yes.

349 Q. Have you worked since the 6th or 7th of July, since you were laid off?

A. No, sir; from the 7th, I worked the 6th, but from the 7th right up to the present day, I have not done anything.

Q. And do you want your job back on the Waterman Steamship Lines?

A. Yes, sir.

Q. One further question. Were you subpoenaed to testify here?

A. Yes, sir.

Cross-examination by Mr. McCorvey:

Q. Mr. Pelletier, you knew the Waterman Steamship Corporation had a contract with the I. S. U., didn't you, providing that their men be given preference in employment?

A. Sir?

Q. You knew that the Waterman Steamship Corporation had a contract with the I. S. U. providing that preference must be given to members of the I. S. U. in employment, did you not?

A. I don't know what was the contract or agreement, specifically.

Q. Didn't you get your employment to start with by being a member of the I. S. U.?

A. Yes, sir.

Q. You knew you had to be a member of that organization

350 in order to be employed under their contract, didn't you?

A. Yes, sir; that is the one reason I had to go back and join the Reorganization Committee.

Q. Waterman had to employ their men under this contract, you understood that?

A. Yes, sir.

Q. At the time you were employed by the Waterman Steamship Corporation, I will ask you if the I. S. U. was not the collective bargaining unit representing the men on that job?

Mr. Hoskins. I object to the question.

Trial Examiner SEAGLE. On what ground?

Mr. HOSKINS. The first ground is that such a question is not within the knowledge of the witness. The second ground is that at the time he made his application, which we have fixed as a date back many years, is immaterial, and the third ground is whether or not the I. S. U. is a representative of the men at the present time has been ordered by the Board to be determined by a general election.

Mr. MCCORVEY. I did not say at the present time, I said at the time he was employed.

Trial Examiner SEAGLE. What time are you referring to?

Mr. MCCORVEY. I am referring to the time he was employed on the last voyage.

Trial Examiner SEAGLE. On the last voyage?

Mr. MCCORVEY. Yes, sir.

351 Mr. LUSTIG. I object to that on the ground that that is not the beginning of his work for the company.

Mr. MCCORVEY. Then, I may remedy the objection by putting it this way.

Q. Everytime you are hired by the Waterman Steamship Company, isn't it a fact that the I. S. U. was the collective bargaining unit representing the men on the ship that you were employed on? Put it that way, each and every time.

Mr. LUSTIG. I object to the use of the term "collective bargaining unit," because that is vague.

Trial Examiner SEAGLE. I think it calls for a conclusion on the part of the witness, which I don't think he is competent to give.

Q. Each and every time you were hired by the Waterman Steamship Corporation you were a member of the International Seamen's Union, were you not?

A. I was.

Q. And you did know they had a contract, under the terms of which they had to give preference to the I. S. U. members, did you not?

A. On the very first voyage that I made for the Waterman Lines, I knew that they had a contract, but on the last voyage I made with the Waterman Line I did not know that they renewed the contract.

Q. You never heard of that contract having been terminated,

352 did you?

A. No, sir.

Q. And you never heard of it being obligated, did you?

A. No, sir.

Q. Mr. Pelletier, you really have no grievance or feeling against the Waterman Steamship Lines, have you?

Mr. HOSKINS. I object to that. I don't see where that is material at all. How in the world can the witness' mental state against the Waterman Steamship Corporation justify the Waterman Steamship Corporation in relieving him from his duties.

Trial Examiner SEAGLE. Are you intending to impeach the credibility of this witness by that question?

Mr. McCorvey. Yes, sir.
Trial Examiner Seagle. The objection is overruled.
Mr. Hoskins. May I have an exception to that ruling?
Trial Examiner Seagle. You have an exception.
Q. Answer the question.
A. You want me to answer it?
Q. Yes.
A. I have no personal feelings. I only tried to get what I was justly signed up for to get as a union member of the I. S. U., and I put in the overtime and when there was nothing done on their part to try to straighten the thing out, I took it to court, after asking
353 the port captain and the port steward to pay me that overtime.
Q. And you based your suit on this contract between the I. S. U. and the Waterman Steamship Corporation as to the scale of wages, did you not?
A. Yes, sir.
Q. And you recognized that contract as being finding and valid and fixing the rate of wages?
A. It is supposed to be.
Q. So you did know of the existence of the contract at that time?
A. I took it to be a contract.
Q. You say that Mr. Fagan told you, when you told him you had joined the N. M. U., you said he could not use you or re-employ you. What was the expression—was Mr. Fagan the gentleman you referred to?
A. Would you mind my answering that last question more fully?
Q. I just wanted to know what was it that Mr. Fagan said to you.
A. This previous question, would you mind my answering it more fully? I knew there was an agreement, but I did not know they had a contract. You say there was a contract signed.
Q. In other words, you draw a distinction between and agreement and a contract?
354 A. Yes.
Q. What is the difference between an agreement and a contract?
A. An agreement is a piece of paper that is written down by the officials of the union stating that they want this agreement, and the contract is that if the Waterman Steamship Lines say that the company accepts that agreement, and is bound by that agreement.
Q. And that is the contract?
A. That is what I have in mind as a contract. I have only seen the agreement. I have never seen no contract.
Q. I may have used the wrong word or the wrong term. Sometimes I referred to it as an agreement between the I. S. U. and the Waterman Steamship Corporation, and sometimes as a contract. Now, you say, Mr. Fagan—you told Mr. Fagan that you had joined the N. M. U.?
A. He asked me.

Q. And you told him you had?

A. I told him I had.

Q. And then he explained to you that under the contract or the agreement which the Waterman Steamship Corporation had with the I. S. U. that he could not employ you to go on another vessel?

A. No, sir, he did not say that, he said he had orders to lay off those men, and then he asked me if the men working

355 under me had joined and I said yes.

Q. That was when the "Bienville" was tied up for repairs, wasn't it?

A. That was when the "Bienville" came into Mobile.

Q. And she was tied up for repairs for nearly a month, wasn't she?

A. When I answered that question it was the day we arrived. I did not know the ship was going to go in for repairs or not, until after we were all paid off.

Q. And you were signed off by the United States Shipping Commissioner, and you signed your release to the Waterman Steamship Company?

A. Yes; you get paid off and you sign a release for each voyage.

Q. And they gave you a release?

A. Yes, sir.

Q. All the members of the crew were signed off in the presence of the United States Shipping Commissioner and released?

A. Yes; and we were given a discharge.

Q. Now, you say Mr. Fagan did not tell you that they could not use you any more because they had to employ I. S. U. men?

A. No, sir.

Q. He didn't tell you that?

A. No, sir.

356 Q. You knew that was the trouble, didn't you?

A. Well, I came to the conclusion that that was the trouble, yes, sir; that is, when they laid me off and when they took my keys away from me.

Q. He did not tell you that the Waterman Steamship Corporation could not breach its contract with the I. S. U., did he?

A. No, sir.

Q. But he did tell you that your membership in the N. M. U. made it impossible to employ you again?

A. He didn't say that.

Q. What union do you belong to at this time?

A. I belong to the Reorganization Committee of the A. F. of L.

Q. That is the same thing as the I. S. U.?

A. That is what I am told.

Q. That is what you understand?

A. Yes, sir.

Q. And you did join the N. M. U., you say?

A. Yes, sir.

Q. Then you severed your relations with that organization?
A. Yes, sir.
Mr. McCorvey. I believe that that is all I want to ask him.
Mr. Hoskins. Mr. Lustig will conduce the redirect examination.

357 Redirect examination by Mr. Lustig:

Q. Mr. Pelletier, you surrendered your N. M. U. book for an I. S. U. book, or for a book of the Committee for Reorganization of the I. S. U., solely for the purpose of being re-employed by the Waterman Steamship Corporation or to be in a position to be rehired?
A. Yes, sir.
Q. And it was because you understood that the Waterman Steamship Corporation would not hire you as a member of the N. M. U., but would hire you if you did have membership in the Reorganization Committee for the I. S. U., that you did so?
A. Yes, sir; on those grounds.
Q. Now, did you know of the existence of a contract between the I. S. U. and the Waterman Steamship Corporation the last time that you sailed on the "Bienville?"
A. I did know that there was a contract, but I didn't know or not—I was told at that time, and then I got the agreement to go by——
Q. When you signed the articles for that voyage, you knew nothing of the existence of an agreement between the I. S. U. and the Waterman Steamship Corporation?
A. Yes, I did know.
Q. Did you ever see a copy of the agreement?
A. Yes, sir.
Q. When was the last time that you saw it?
358 A. The last time I saw the copy of the agreement was while I was taking my overtime case to court.
Q. And when was the time before that last time?
A. There was one aboard the ship in my room.
Q. Now, when you were given your discharge, according to the ship's articles, by the United States Shipping Commissioner, did you understand that to be the termination of your contract of employment with the company?
A. I understand it to be a termination of the voyage, but not a termination of the employment.
Q. In your experience as a seaman, or going to sea, that has been your understanding of the nature of a discharge by the Shipping Commission of the United States?
A. That is right, as such.
Q. And you have been a member of the I. S. U. before, haven't you?
A. Yes, sir.

Q. Was it your duty as the steward to report overtime?
A. Yes, sir.
Q. And had overtime been reported on a previous voyage?
A. Yes, sir; but not by me.

Recross-examination by Mr. McCONVEY:

Q. Mr. Pelletier, let me just ask you this for a moment. You say that when the voyage ends you sign off there in the presence
359 of the United States Shipping Commissioner?
A. Yes.

Q. But you don't consider that the employment terminated, is that right?
A. Yes, sir; it has been the rule here in this port.
Q. I know; but ships coming in and unload their cargo and then load cargo and go right out again, leaving in a few days, and that has been the practice, but how about a ship like the "Bienville" when she is tied up for these major repairs taking something like a month. Do you mean that you are required to hold yourself in readiness and you are not at liberty to take employment on other ships?
A. I have never been tied up on a ship that has been tied up for that length of time, but I have been on a ship that was tied up for 11 days. While I was employed on the S. S. "Fairport," as chief steward, we came in in the month of—I have the record here in my pocket—do you mind my looking at it?
Q. No.
A. The third month I signed on, the 9th day of 1935, and the ship came back into port on the third day, no, the third month, the 18th day, 1935, and then the ship tied up and I was rehired back on that ship on the 4th month and first day to the 4th month and 22nd day in 1935, and she was tied up 11 days, from the 21st of the 3rd
360 month to the 1st of the 4th month, and the crew was, most of the crew was paid off, and those that quit, they were not rehired, but I was kept aboard as the chief steward to put everything away, that is the bedding and the crockery, and one thing and another, and to tidy the ship up, and to make everything secure for about three days, and then I took my keys back into the office and turned them into Mr. Fagan, and then he sent for me 11 days after that to go back on the same ship as steward.

Q. When a vessel was brought in and tied up for major repairs, such as was done on the "Bienville," the boilers being re-bricked and the passenger quarters reconditioned, and the deep tank converted into a cargo hold, and all these numerous repairs you heard testified about, and when the vessel is brought in and tied up for about a month while those repairs are going on, you don't mean it is customary then for the seaman to consider that he is still employed on that ship?
A. When the "Bienville" got here after the first voyage we were in port four days and repairs were going on and then they reconditioned the passenger quarters. That was done on the first trip.

Q. I am not talking about the time it was tied up for four days, but we are talking about the time before us now, when one of the witnesses said she was tied up about 27 or 28 days, as I understand the testimony. Now, you take the position as I understand you,
361 that you were still employed by the Waterman Steamship Lines when they had no employment for you, is that correct?

A. That I should have got on the ship.

Q. Do you feel that you were at liberty to accept employment elsewhere, or do you feel that you had to go out on this vessel?

A. I was kept aboard the ship all the time.

Q. But they did not keep the other members of the crew?

A. They did not keep them, but they generally keep the stewards on at all times.

Q. What about the other members of the crew, do they generally keep all of the crew at work?

A. All of them, they kept practically all.

Q. During the period of thirty days' repairs?

A. Well, I couldn't say thirty days, but I have known them to keep the crew by for ten to fifteen days.

Q. But you have never known of a vessel coming into port and being made up for repairs taking 27 days to complete, where all of the crew was kept on duty and paid during that period?

A. I have never heard of them staying that long.

Q. You did not consider that you were still employed by the Waterman Steamship Corporation and had to hold yourself in readiness to go out with this boat, when this boat sailed again, no matter how long it might be before it sailed?

362 Mr. Hoskins. I think that that is stating a conclusion which the witness did not expect.

Trial Examiner Seagle. I don't think that the questions is at all relevant.

Mr. McCorvey. The point I make is briefly this. We contend that when a man signs up for a voyage and comes back in, that his re-employment is new employment.

Trial Examiner Seagle. I do not see how you can make that contention in view of the provisions of article two, Section one of your own agreement, and I call your attention to the fact that the agreement provides——

Mr. McCorvey. Which Article is that?

Trial Examiner Seagle. Article 2, Section 1, which provides that "Members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment," and it goes on to provide as follows: "This Section shall not be construed to require the discharge of any employee who may not desire to join the union, or to apply to prompt re-shipment, or absence due to illness or accident."

Now, that provision would indicate that irrespective of the existence of any general custom, that the provision would not come into effect at the termination of the voyage; that the members of

the crew would still be entitled to re-employment on another
363 ship or some ship, provided they do not, of course, accept employment elsewhere.

Mr. McCorvey. Do you mean when you say "or to apply to prompt reshipment" that any ship laid up 27 days for repairs, that that is "prompt reshipment."

Trial Examiner Seagle. You are raising another question as to what was meant by the word "prompt." But there cannot be any question that the mere termination of the voyage would entitle the company to refuse employment to a member of the National Maritime Union of America, who was not a member of the International Seamen's Union of America.

Mr. McCorvey. That is the question which we find in this case.

Trial Examiner Seagle. And there is a question as to how prompt reshipment shall be. However, I repeat what I said in the beginning, that the question you asked was not proper in view of that provision.

Mr. McCorvey. We except. I believe that that is all.

Redirect examination by Mr. Hoskins:

Q. As a matter of fact, you do know Mr. Fagan replaced you when the boat came in with a man named Black?

A. Yes, sir.

Q. That man's name was Black?

A. Yes.

Q. And he worked after the boat tied up?

364 A. Yes.

Q. Do you know what Union he was affiliated with?

A. He was affiliated with the I. S. U.

Q. You stated earlier that it was the custom in the case of stewards for the port steward to call a steward to work, and not to call him through the Hall?

A. Yes, sir.

Q. And were you ever called?

A. No, sir.

Q. When the "Bienville" was put back into commission were you called?

A. No, sir.

Trial Examiner Seagle. Are there further questions of this witness?

(No response.)

Trial Examiner Seagle. The witness is excused.

(Witness excused.)

DUDLEY BEUK, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. BELL:

Q. What is your name?

A. Dudley Beuk.

Q. What is your address, Mr. Beuk?

365 A. 210 South Warren Street, Mobile.

Q. And your occupation?

A. Marine fireman and oiler.

Q. How long have you been going to sea, Mr. Beuk?

A. Approximately three years.

Q. From what ports during those three years have you sailed?

A. New Orleans, Houston, Galveston, and Mobile.

Q. And on what lines have you sailed?

A. Lykes Brothers and Morgan.

Q. When was the first time that you worked for the Waterman Steamship Corporation?

A. On the "Bienville.".

Q. What date was that?

A. From March 4th until July 6th.

Q. Was that the only trip that you made?

A. That was the only trip.

Q. Are you referring to your discharge slips?

A. No, sir; I am not referring to them. I can refer to them.

Q. I was just wondering how you were getting those dates, whether from your memory, or by refreshing your memory from your discharge slips.

A. Just from memory.

Q. Did you sign articles on the ship?

A. Yes, sir.

Q. And you sailed from Mobile?

366 A. Yes.

Q. And went where?

A. To Le Havre, France; Antwerp, Belgium; Rotterdam, Holland; and Bremen and Hamburg, Germany.

Q. When did you return?

A. We returned to Mobile July 6th.

Q. Have you ever belonged to the I. S. U.?

A. Yes, sir.

Q. When did you join?

A. In February 1935.

Q. Were you a member of the I. S. U. when you sailed on the "Bienville"?

A. Yes, sir.

Q. Have you ever been a member of the N. M. U.?

A. Yes, sir.

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Q. When did you join the N. M. U.?

A. It was around the first part of July.

Q. State the circumstances of your joining the N. M. U.

A. Well, sir; it was mostly; most of the members of the ship were sympathizers with the N. M. U., and called a meeting in Le Havre, France. It was most of the members there, in fact all of the members decided to exchange their books for the N. M. U. books when we got to the first port in the United States, and we sent a letter to the N. M. U. delegate here in Mobile, telling him to
367 notify, whatever the first port would be, to notify the N. M. U. delegate there, and when we arrived in Tampa, the N. M. U. delegate had not been notified, but he was met uptown by a couple of the fellows off the ship, and they told him about what had taken place and asked him to come down, and he came down, and I did not see him that night, but I seen him the next morning and I exchanged my book for the N. M. U. in the mess room.

Q. Do you know the name of this delegate?

A. James Bennett.

Q. And did he come on board the boat, you say, at Tampa, on the "Bienville"?

A. Yes, sir.

Q. You don't know whether there was objection or not to his coming on board the "Bienville"?

A. No, sir; I don't, I was only with him a few minutes.

Q. And after you left Tampa on your voyage, and on the way to Mobile, were you approached by any of the officers of the "Bienville" in regard to your union affiliation?

A. Yes—no; not about the union affiliation. I was approached by the first assistant and he asked me if I was wanting to make another trip, and I told him yes, and he told me my work was satisfactory and I could make the trip if I wanted to.

Q. Did he know then that you had joined the N. M. U. in Tampa?

A. He did not talk to me about it, but I suppose he did.

368 Q. He did not mention it to you at that time?

A. No, sir.

Q. Now, I ask you, Mr. Beuk, if in the ports from which you have sailed, and as you know it, what is the custom covering the preference to be given members of the crew when the ship on which they have just sailed is ready to start out on its next voyage?

A. Well, sir, I made fourteen trips on one ship, and I was always rehired.

Q. What was the name of that ship?

A. "Tilly Lykes."

Q. And you made fourteen trips?

A. Yes, sir.

Q. Fourteen trips——

A. Yes; and once during that time we went into dry-dock, and stayed four or five days and I stayed aboard the ship and we went back out on it.

Q. Did the rest of the crew stay on board the ship while it was in
y-dock?
A. Yes, sir. Another ship that I was on for Lykes Brothers Com-
ny was the "Duquesne" and we laid in——
Q. Let me ask you. You say you made fourteen trips on that boat?
A. Fourteen.
Q. And at the termination of each voyage were you dis-
charged?
A. Yes, sir.
Q. And at the beginning of the next voyage did you sign
icles?
A. Yes.
Q. All right.
A. I was on the "Duquesne" nine days for repairs when we were
the dock in Galveston.
Q. In dry-dock?
A. No, sir; it was not in dry-dock.
Q. It was just in the dock for repairs?
A. Yes, sir.
Q. Tied up?
A. Yes, sir.
Q. For how long?
A. Nine days I remained on board that ship.
Q. And were you paid for those nine days?
A. Yes, sir.
Q. Regular pay?
A. Yes, sir.
Q. And you were working on the boat all the time?
A. Yes, sir.
Q. And you stayed on the boat when it came out of dock for the
xt voyage?
A. Yes, sir.
Q. Do you know from your own knowledge, your experience
and knowledge, whether the Waterman Steamship Corpora-
tion has followed this custom?
A. Well, from the members that I know, from the members I
ow that have gone to sea for them, I have heard that they have.
Q. They recognize the preference to the crew just having com-
eted the voyage to be allowed to go out the second voyage on the
ne boat?
A. Yes, sir.
Q. And I will ask you, then, if you regard the expiration of the
yage as the actual termination of employment on that boat?
A. No, sir.
Q. I will ask you if the mere expiration——
Trial Examiner SEAGLE. I may repeat that I do not regard that
estion as at all relevant in view of the provisions of the contract,
ticle 2, Section 1, which provides that it does not come into opera-
n——

Mr. McCorvey. Mr. Examiner, I think we are just letting in a lot of evidence on cases involving prompt reshipment, when we haven't got anything like that before us. They are asking about a ship that comes in and is promptly reloaded and goes out, but we haven't got any such case before us here.

(Discussion had off the record.)

371 Trial Examiner Seagle. I think there will be some question as to how soon the shipment will have to be to be called prompt. However, won't you concede that it is a matter of law whether the articles are to be considered terminated or not.

Mr. McCorvey. I think that that is a matter of law.

Trial Examiner Seagle. That is right, but in your agreement will you concede that if the men were reshipped the next day, that they would not be discharged under Article 2, Section 1 of the agreement, because he was not a member of the I. S. U., isn't that true?

Mr. McCorvey. Yes; I believe that your Honor's interpretation is correct. When there is prompt reshipment, the vessel is loaded and then goes right on out——

Trial Examiner Seagle. Yes; and consequently it makes no difference as to what the effect of the articles are.

Mr. McCorvey. If there was what is known in shipping circles as prompt reshipment, that will mean, in shipping circles, as I understand it——

Mr. Bell. The statement has been brought out by Mr. Beuk where he has been on a ship that went into drydock for repairs for 19 days.

Trial Examiner Seagle. I have already decided that that testimony is proper, but I do not see any purpose in questioning the witness as to the effect of the termination of the voyage on the articles.

372 Mr. Bell. To substantiate the fact, to show the custom among seamen.

Mr. Lustig. I think, for the purposes of clarifying the record and it may avoid numerous questions, if the steamship company conceded that the termination of the trip and the signing of the discharge at the end of the voyage is not a termination of a contract of employment. If they do, we can avoid a good deal of these questions.

Trial Examiner Seagle. That is not the question, whether it does or does not. Mr. McCorvey has, however, conceded that irrespective of whether it is or is not a termination, that the reshipment would be prompt, the company would not discharge a member of the crew even though he were not a member of the I. S. U.

Mr. McCorvey. I don't think that that is the point. My contention is that if there is going to be a prompt reshipment, I believe that they cannot maintain the position under our contract with the I. S. U., and get all of them who joined the I. S. U.——.

Trial Examiner Seagle. In other words, you agree with me as to that

Mr. McCorvey. I think that your Honor has agreed that it would e prompt reshipment, even though they joined the N. M. U., but he I. S. U. differs with us, they say they would hold us to the con-ract, if we did that.

Mr. Bell. I would like to call attention to a statement 73 in the answer of the respondent, paragraph 4, on page 3:

"That the contract of employment of the crews of both of aid vessels terminated, as is usual and customary in such cases."

Mr. McCorvey. Read the next line—"When the said vessels were aid up for repairs or went on dry-dock."

Mr. Bell. I want the Examiner to take notice of the statement nade by the attorney for the respondent that in instances where here was prompt sailing, in the instances which have been met up n the complaint, that of the "Fairland," which remained in the port f Mobile four days, and yet the same thing occurred when the mem-ers of the "Fairland," at the time it proceeded on its next voyage, hat they only remained in the port of Mobile for four days——

Trial Examiner Seagle. Very well, you may proceed.

Mr. Bell. Counsel has asked that I continue and read the next ine, going back to his answer, and I will read it: "When the said essels were laid up for repairs or went on drydock."

Q. Mr. Beuk, were you fired from the "Bienville?"

A. No, sir.

Q. Well, what took place?

A. Well, sir, the first assistant notified the crew that they was laid off.

74 Trial Examiner Seagle. Is that the first assistant engineer?

A. Yes, sir.

Q. The first assistant notified the crew?

A. The crew in the engine room department.

Q. Did you hear the statement by the first assistant engineer?

A. I heard him say it to me.

Q. You were there at the time?

A. Yes.

Q. Now, of course, you are not working on the "Bienville" now?

A. No, sir.

Q. Have you worked since?

A. No, sir.

Trial Examiner Seagle. What date was that?

The Witness. It was July 6th.

Q. Do you know who left the boat, the "Bienville," at the same me that you left? Do you know the names of the members of the ew that left that day with you?

A. Well, sir, we all left.

Q. The whole crew left?

A. Yes; as far as I know, most of them left.

Q. Were you given any work after that, when the ship was in the ock?

A. No, sir.

Q. Do you know any others that were given work after the
375 "Bienville" was in dock?

A. Yes; there was several of them given work in the shore gang.

Q. When the "Bienville" sailed on its next voyage, after July 6th, you were not contacted, were you, by any of the officials of the boat?

A. No, sir.

Q. Since July 6th have you approached any Waterman officials for the purpose of obtaining your job back?

A. No, sir; I did not think it would be any use.

Q. Why didn't you think it would be any use?

A. Because I belonged to the N. M. U.

Q. Have any of the Waterman officials contacted you since July 6th, offering you a job?

A. No, sir; I met the first assistant one evening on Dauphis Street.

Q. What did you say to him?

A. Well, we talked about work.

Q. What were your wages on your last trip for Waterman?

A. $72.50 a month with subsistence.

Q. Have you earned any money since then?

A. No, sir.

Q. Would you like to have your job back with the Waterman Steamship Corporation?

Mr. McCorvey. Now, if it pleases the Examiner, I cannot
376 see where asking this witness whether or not he would like his job back is relevant.

Trial Examiner Seagle. He has asked that for the information of the Board. The Board wants to know whether he wants to be reinstated. Answer the question.

A. I would like to be reinstated.

By Mr. Lustig:

Q. Do you know, Mr. Bouk, how soon after you were discharged another man replaced you, or another crew replaced you?

A. It was approximately three weeks.

Trial Examiner Seagle. Are you finished, Mr. Bell?

Mr. Bell. Yes, sir. I am through, but Mr. Lustig had this question which he wanted to ask.

Trial Examiner Seagle. Yes; but I have already stated that I will permit examination by only one counsel.

Cross examination by Mr. McCorvey:

Q. You have been in the shipping business how long?

A. Approximately three years.

Q. What does the term "prompt reshipment" mean in shipping circles?

A. Well, as far as I know, it is shipping right back out again.

Q. As soon as you unload you load right up again and go out?

A. Yes, sir.

377 Q. And you never heard of it used in any other sense, have you?

A. I have known of one ship that was laid up five weeks and the crew went back.

Q. You did not get my question. I asked you if that is what the term "prompt reshipment" means unloading and loading right up again and going out?

A. I suppose it does, I don't know.

Q. Did you get a copy of this contract which Judge Howard has in his hand there, between the Waterman Steamship Corporation and the I. S. U.?

A. Yes.

Q. In fact, there was a copy given to each member of the crew by Mr. Ross, wasn't there?

A. I was not in that part of it, I was not in this port at that time.

Q. I mean you are familiar with the contract which we have?

A. Yes, sir; I am familiar with it.

Q. And you knew that certain steamship companies—I believe you worked for Lykes, you say, at one time?

A. Lykes Brothers; yes.

Q. They were in the contract, they had contracts that they had to employ I. S. U. men, and you understood that?

A. Well, sir; I suppose so.

Q. That was your understanding?

378 A. Yes.

By Mr. HOWARD:

Q. I believe that you said on one occasion you were kept on the ship in your regular position when the ship remained in Galveston on drydock for nine days?

A. It was not in drydock, it was under repair.

Q. At the Galveston port, and you were not discharged from the ship?

A. Yes.

Q. And you went out on it, you say, and made the next voyage?

A. Yes.

Q. And when you came to go back out again, when she sailed, you signed articles?

A. Yes, sir; I signed articles.

Q. Was there anything said to you before you signed articles?

A. I don't recall, it has been so long ago.

Q. And did she keep all of her crew there in the engine room department while she was going under repairs?

A. Yes, sir; except one or two men who were fired for just cause.

Redirect examination by Mr. BELL:

Q. This voyage that you made on this boat back at Galveston, which Mr. Howard asked you about, and he mentioned nine days, didn't you testify that she was laid up nineteen days?

379 A. No; it was nine days.

Q. I thought you said that it was in drydock nineteen days.
A. No, sir; I said that she was at the dock for nine days.

Examination by TRIAL EXAMINER:

Q. Did I understand you to say that you knew of a case where a ship was laid up for five weeks?
A. Yes; I did.
Q. What ship was that?
A. The "Quistoonk," Lykes Brothers.
Q. Were you a member of that crew?
A. No, sir; I was not, it was in port at Galveston.
Q. What happened to that ship?
A. Well, she was just laid up.
Q. Was she put up in drydock?
A. No, sir; she was laid up because they did not have any work for her, and when they got ready to go back out again the same crew was on her.
Q. You mean to say that they did not have any cargo for her?
A. They got cargo when they were ready to sail out, but she was five weeks idle.
Q. And why was it laid up for five weeks?
A. Because they didn't have cargo for her for five weeks.
Q. And would the members of the crew still regard themselves as attached to the vessel when there was no cargo available
380 for them?
A. Yes.
Q. And they were waiting in port to receive cargo?
A. Yes.

Mr. HOWARD. Mr. Examiner, may the record show that I delivered copies of the intervening petition to all of the counsel in the case and the proper number of copies for the Board?

Trial Examiner SEAGLE. Very well, the record will show it.

(Witness excused.)

EARLE R. WILKERSON, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. HOSKINS:

Q. Where do you live, Mr. Wilkerson?
A. 1108 Bay Avenue, Mobile.
Q. What is your occupation?
A. Marine fireman, oiler, and water tender.
Q. How long have you been going to sea in that occupation?
A. Ever since 1922.
Q. Will you give us a list of some of the ports in which you have signed articles and sailed?
A. New York, Philadelphia, Baltimore, Mobile, Galveston,
381 and San Pedro.
Q. And what are some of the lines you worked on?

A. Grace Line, Pennsylvania Shipping, Waterman, Texas Company, and Atlantic Refining.

Q. When was the first time you sailed on a Waterman boat, do you remember?

A. I think it was 1923 or 1924.

Q. Do you remember what the name of that boat was?

A. "Cohoma County."

Q. And what are some of the other Waterman boats you sailed on?

A. "West Kyska," "West Zeda," "Maiden Creek," "City of Alma," "Bienville."

Q. Now, Mr. Wilkerson, based on your experience that you have just outlined, I want you to tell the Court what, if any, is the custom of determining whether the crew stays employed on board a ship after the boat has reached its final port of destination and before it sails on its next voyage?

A. It has been the custom of the ships I have worked on, that the first assistant will ask you, before you were paid off, if you wanted to come for another trip, and if you did, you signed on again.

Q. And if you signed on again, did that mean that you worked while the boat was in port?

A. You worked all the time until you signed the articles

382 Q. And you say they asked you if you wanted to sail again?

A. If you wanted to make another trip.

Q. And what were the occasions when he would not ask you that?

A. Well, you would consider yourself fired.

Q. If he did not ask you that, you were fired; is that right?

A. Yes.

Q. What, if any, was the custom as to whether the crew is kept employed when the boat goes into drydock or is tied up temporarily for repairs?

A. I was on the "City of Alma" here last August——

Q. That is a Waterman boat?

A. Yes, sir. We were in for repairs, I think, ten or twelve days, and they kept part of the crew on and part of them was laid off, and notified that they would be back on the ship when it went into commission again.

Q. Did I understand you to say that part of the crew was kept on the ship while the ship was in drydock?

A. Yes, sir.

Q. And as for the rest there was no vacancy?

A. They were laid off, paid off, and they were notified when the ship went into commission they can go out again.

Q. In other words, their jobs were open for them?

A. Yes.

Q. Were you ever on another boat that was in drydock?

383 A. The "Maiden Creek."

Q. How long ago?

A. 1927.

Q. How many days?
A. Four or six days.
Q. And what did the crew do?
A. The crew stood by.
Q. Do you mean by that that they worked?
A. Yes.
Q. How many days?
A. I think it was four, five, or six days.
Q. Any other Waterman boats?
A. No, sir.
Q. Ordinarily, how long is a boat in when there are no repairs done on it, when she just comes in, discharges the cargo, loads, and sails out again?
A. With the Waterman ships here, I noticed it has been two or three days.
Q. And is the crew generally kept by on them?
A. Yes, sir.
Q. Now, these customs which you have told us about, to your knowledge, do the unions recognize them?
A. Yes.
Q. Do the unions consider that there is no vacancy until a man resigns?
384 A. Yes; they do not figure it is any vacancy until they call the Hall for another man.
Q. You stated that you sailed on the "Bienville." When did you sail on that, Mr. Wilkerson?
A. May 5th or 6th, until April 6th.
Q. You say from May to April?
A. To July 6th.
Q. Were you a member of the I. S. U. when you started out on that voyage?
A. Yes.
Q. How long had you been a member of the I. S. U.?
A. May 1936.
Q. Did you ever belong to the N. M. U.?
A. Yes.
Q. When did you join it?
A. July 3rd.
Q. Whereabouts?
A. Tampa, Florida.
Q. Who signed you up on it?
A. Booth.
Q. And where did this take place?
A. Back aft of the mess room.
Q. On the boat?
A. Yes, sir.
Q. You stated a moment ago it was the custom, I believe,
385 of the first assistant to ask the men if they were going to make another trip?

A. Yes, this is what they done on the "Bienville."
Q. Were you asked if you were going to make another trip?
A. Yes.
Q. When did they ask you?
A. After we left Tampa, Mr. Reynolds had asked me if I wanted to make another trip and I said sure.
Q. Was there any reply?
A. Well, he said, "Well, your work has been satisfactory, you can make another one, if you want to."
Q. Did you make another trip?
A. No, sir.
Q. Why not?
A. I was laid off when she came into Mobile.
Q. Tell us the circumstances, if you will, surrounding your discharge.
A. The first said, "We are going to shut down at midnight and everyone is laid off."
Q. When did he say that?
A. That morning.
Q. Which morning?
A. The morning of the 6th.
Q. That was the morning you got into Mobile?
A. No, sir; we came in about 11:30 the night of the 5th.
386 Q. And this was the following morning?
A. Yes, sir.
Q. And had everyone stayed on board that night?
A. No, sir; I went home.
Q. And it was on the following morning he told you that they were going to shut down at midnight?
A. Yes, sir.
Q. Do you remember his exact conversation?
A. No, sir; I do not. I asked him whether we were going back on and he said as far as he was concerned we was.
Q. Did you work that day?
A. Yes, sir. I finished my day.
Q. Then were you paid off?
A. Yes, sir.
Q. And now, have you worked at all for Waterman since that time?
A. Longshoring.
Q. How many days did you work as a longshoreman?
A. I don't know exactly.
Q. Well, about?
A. About two weeks, I guess, all together three weeks.
Q. And who did you have to see to get that job?
A. That comes through the I. L. A.
Q. Had you been asked to see about getting your job back on the boat?
387 A. No, sir.

Q. Had you worked on the boat at all while she was in drydock, while she was in port?

A. Yes; three days.

Q. When was that?

A. I don't remember the exact days, it was after she came in when I heard some rumor around the Hall that the crew was being put back to work and I went down to see Mr. Reynolds.

Q. Who is Mr. Reynolds?

A. First assistant, and he told me to come back the following morning, and I came down the following morning and he told me to turn to, to go to work.

Q. And you say you did work three days?

A. Yes, sir.

Q. What type of work did you do those three days?

A. I was working on the condenser pump, and packing two valves.

Q. How many men were working on the boat, would you say, during that time?

A. I don't know, I imagine around 50 or 75.

Q. And what type work were they doing, what type work was being done, that you could observe?

A. Well, there was general overhauling.

Q. What all does that include?

A. Working on the turbine pumps——

388 Q. Was there any painting, scraping, and carpentry work?

A. Yes, sir.

Q. That sort of work was going on too?

A. Yes, sir.

Q. Was there work going on that the crew could have done, that they were competent to do?

A. Yes, sir.

Q. Was it the type of work that the crew had to do on those occasions when you stayed on the boat when it went into drydock?

A. Yes.

Q. As a matter of fact, there were more men working on the boat then there were members of the crew, is that right?

A. Yes, sir.

Q. Were any of the members of the crew working with you?

A. Yes, sir.

Q. Can you tell us any of their names?

A. There was Fred Gordy, and Schuettner, and there were some men off the "Fairland" over there, the steward.

Q. You say that you worked three days?

A. Yes.

Q. What happened at the end of the third day, that you did not continue working?

A. At that time we were laid off, I worked at first and then they laid us off in the afternoon.

389 Q. Was your work completed in the afternoon?

A. No, sir.

Q. There was still work that you could do?
A. Yes, sir.
Q. And how many were laid off?
A. I think everyone was.
Q. You mean the 50 or the 60 that were working at that time?
A. No, sir; just the ones that came off the "Fairland" and the "Bienville."
Q. How many were there?
A. Six or eight, I believe.
Q. Were they all N. M. U. men?
A. Yes; at that time.
Q. Now, when you were on the "Bienville," on the last trip, what was your position?
A. Oiler.
Q. And in such position, what was your salary?
A. $82.50 a month and subsistence.
Q. $82.50 a month and subsistence?
A. Yes, sir.
Q. Outside of the work that you did on the engine of the "Bienville" while it was in the dock, which was for the Waterman Corporation, and the work that you did as a longshoreman for the
390 Waterman Corporation, have you made any money since July 6th or 7th?
A. No, sir; that is all.
Q. And do you desire to be reinstated?
A. Yes, sir.
Mr. HOSKINS. I believe that is all.

Cross-examination by Mr. MCCORVEY:

Q. Mr. Wilkerson, you have been going to sea, you say, about 12 or 15 years, or something like that?
A. Off and on; yes, sir.
Q. And you are familiar with the terms used in shipping circles, are you not?
A. Yes; some of them.
Q. And when you speak of a ship going into port for prompt reshipment, what does that mean to you?
A. That means right away.
Q. Prompt reshipment is when the ship comes in, unloads the cargo, loads another cargo, and goes right out again?
A. Yes, sir; I imagine so.
Q. I mean that is the way it is usually used, that term, "prompt reshipment"; that is your understanding of it?
A. Well, I never have paid much attention to that.
Mr. MCCORVEY. I believe that that is all I have to ask him.

By Mr. HOWARD:

Q. Mr. Wilkerson, how long have you been following the sea?
391 A. Off and on since 1922.

Q. Do you remember when you went out on this steamship, the "Bienville"?

A. Yes, sir.

Q. And you were a member of the International Seamen's Union then?

A. Yes, sir.

Q. And you had provided yourself with a copy of the contract?

A. No, sir; I didn't have it.

Q. Well, you have seen the contract, haven't you?

A. Yes, sir; I have glanced through it.

Q. You knew you were employed because you belonged to the International Seamen's Union?

A. Yes.

Q. And you knew that when you joined the National Maritime Union you could not be given any more preference, didn't you?

Mr. HOSKINS. I object to that question. That is a conclusion of law. These conclusions of law have been flying around here all day, as to what that contract means.

Trial Examiner SEAGLE. The objection is sustained.

Mr. HOWARD. May I have an exception?

Trial Examiner SEAGLE. You have an exception.

Q. You knew at that time, as a member of the International Seamen's Union, that your union, to which you belonged, had a contract with the Waterman Lines to give you preference in
392 employment?

A. Yes; I imagine it did.

Q. Now, after you set out on your voyage, and before you came back to be paid off, you ceased to be a member of the International Seamen's Union?

A. I don't understand that.

Q. You ceased, I mean you were no longer a member of the International Seamen's Union, you separated from the Union and you had no more connection with them after you left Tampa. It was at Tampa that you joined the National Maritime Union, wasn't it?

A. Yes, sir.

Q. And when you came back to Mobile, did you ask for employment?

A. With the Waterman Corporation?

Q. Yes.

A. No, sir.

Q. You know that there was a contract prohibiting your employment, didn't you?

Mr. HOSKINS. Once again, Mr. Examiner, I must object. I think that that is a conclusion of law as to whether that contract prohibited his continuity of employment.

Trial Examiner SEAGLE. Sustained.

Mr. HOWARD. May I have an exception?

Trial Examiner SEAGLE. Exception noted.

393 Q. Why was it that you did not ask for employment?

A. I did not think it would be any use, being a member of the N. M. U.

Q. Then, you knew that you had yourself, as a member of the N. M. U. breached your part of the agreement?

Mr. Lustig. I object, there is no proof here that he is subject to this agreement, nor has he signed it, nor is he a party to it.

Mr. Hoskins. And there is nothing in that agreement requiring that he continued membership in the I. S. U. or membership in any other union.

Trial Examiner Seagle. Sustained.

Mr. Howard. May I have an exception?

Trial Examiner Seagle. You may have an exception.

Q. On what ground do you claim the right to further employment on the "Bienville"?

Mr. Hoskins. Mr. Examiner, I hate to keep on objecting, but I think the issue is clearly stated in the pleadings of the case.

Trial Examiner Seagle. The objection is sustained.

Mr. Howard. May I have an exception to that, sir?

Trial Examiner Seagle. You have an exception.

Mr. Howard. That is all.

Redirect examination by Mr. Hoskins:

394 Q. You have heard about this term "prompt reshipment." Are you acquainted with the term, or were you when you gave your interpretation of it, as to what was your interpretation of the wording?

A. No, sir; I am not acquainted with it.

Q. When your employment was terminated on the "Bienville," were you given to understand it was being terminated because of your membership in the N. M. U.?

A. No, sir; there wasn't anything said about it.

Q. What was the reason given?

A. Well, they said they were going to shut-down.

Q. That was the only expression used?

A. Yes.

Mr. Hoskins. That is all.

Examination by Trial Examiner:

Q. Do you remember what you made during the three days' work on the "Bienville" in dry-dock?

A. No, sir; but I think it was $82.50, the regular scale.

Q. You were working on the same basis as when you were a member of the crew?

A. Yes, sir.

Q. Do you remember what you made when you were working as a longshoreman?

A. 75 cents an hour.

Q. And do you remember how many hours you worked?

A. No, sir, not exactly; but it was around 100 or 110 hours.

395 Q. You don't know the exact amount you earned while working as a longshoreman?

A. Around $75.

Q. Were you employed also as a longshoreman by the Waterman Corporation?

A. Yes, sir; that is, the foreman was called from a stevedoring company, and I carry an I. L. A. card and he hired me.

Q. And then you were hired on the "Bienville" while she was in drydock?

A. Yes, sir.

Q. And when you worked on the "Bienville," when you were hired, while she was in drydock, were you asked to join any particular labor organization?

A. No, sir.

Q. Have you ever been on a ship which had to wait a long time for cargo?

A. No, sir; I have not. I can't remember any. I was on one that stayed two months in drydock.

Q. Which ship was that?

A. The "Aryam," a Texas tanker.

Q. What line operated that ship?

A. The Texas Oil Company.

Q. And were you rehired?

A. I stood by a full two months while she was in drydock.

Q. And you worked on the ship while she was in drydock?

396 A. Yes, sir; two months.

Q. And then did you sail with the ship after she was off the drydock?

A. Yes, sir.

Q. And do you recall any other similar cases?

A. No, sir; I can't recall any.

Q. Did you ever work on a ship that was laid up about a month in drydock?

A. Yes, sir, I have; but that was the Shipping Board's.

Q. It was operated by the Shipping Board?

A. Yes, sir.

Q. What happened in that case?

A. Well, they went and called a stand-by crew.

Q. And had you been a member of that crew while the vessel was on its voyage?

A. No, sir; I shipped here in Mobile, and the ship was laid up and went in drydock in Pensacola.

Q. You were not a member of the crew when the vessel was laid up in drydock?

A. No, sir.

Recross examination by Mr. McCorvey:

Q. Mr. Wilkerson, you testified you stood by a vessel two months?

A. Yes.

Q. Did you have some work, special work assigned to you
397 while she was in drydock, this Texas Company vessel?
A. No, sir; we were doing regular work, water tender's work
nd cleaning the boilers.
Q. Was the entire crew kept on?
A. No, sir; just a part of the crew.
Q. Just part of the men?
A. Yes.
Q. Just a few of the men necessary to keep the ship in shape?
A. No, sir; just part of the crew.
Q. And the whole crew was kept on for two months?
A. No, sir.

Redirect examination by Mr. Hoskins:

Q. The whole crew was not discharged like on the "Bienville"?
A. No, sir; the whole crew was there for their jobs when she was
commissioned again.
Q. Do you know of any case in your experience when the whole
crew was discharged like on the "Bienville" or the "Fairland"?
A. No, sir.
Q. Do you know whether the officers of the "Bienville" or the
Fairland" were discharged?
A. No, sir; I don't know about the "Fairland."
Q. When you worked down there those few days were the
398 officers working too?
A. Yes.
Mr. Hoskins. That is all.
Trial Examiner Seagle. The witness is excused.
(Witness excused.)
Trial Examiner Seagle. The hearing is now adjourned until 9:30
o'clock tomorrow morning.
(Whereupon, at 5:05 o'clock p. m., an adjournment was taken until
November 3, 1937, at 9:30 o'clock a. m.)

402 Before National Labor Relations Board, Fifteenth Region

Case No. XV–C–75

[Title omitted.]

Federal Building,
Mobile, Alabama, November 3, 1937.

The above-entitled matter came on for hearing, pursuant to ad-
journment, at 9:30 o'clock a. m.
Before William Seagle, Trial Examiner.

Appearances

Joseph A. Hoskins and Berdon M. Bell, attorneys on behalf of the
National Labor Relations Board. Stevens, McCorvey, McLeod,

Goode & Turner, Merchants Bank Building, Mobile, Alabama, by Gessner T. McCorvey, on behalf of the Respondents. William L. Standard, 291 Broadway, New York City, by Max Lustig, of counsel, on behalf of the National Maritime Union of America. Alex Howard, 415 Van Antwerp Building, Mobile, Alabama, on behalf of the Seamen's Reorganization Committee of American Federation of Labor.

403 PROCEEDINGS

Colloquy

Trial Examiner SEAGLE. The hearing will come to order.

Mr. MCCORVEY. Mr. Examiner, I wish to make an amendment, which is about a line in length.

Under your procedure, can there be an amendment by interlineation in my answer, or should it be prepared by a separate paper?

Trial Examiner SEAGLE. You can do it either way.

Mr. MCCORVEY. Has the Examiner before him the answer we filed?

Trial Examiner SEAGLE. The original answer; yes.

Mr. MCCORVEY. On page 5, just before paragraph 7, at the bottom of page 5, and in the lower part of paragraph 6, it says there: "and the only reason that the employees listed in the amended complaint, or some of them, were not employed by this respondent when it obtained a new crew for its vessel was due to the fact that they were not members of the International Seamen's Union of America, from which organization this respondent, under its said contract, was required to obtain its employees."

At the time I drafted the answer I did not know that there was one man discharged on account of his services being unsatisfactory, Mr. Pelletier, and so, I wish to amend the answer by adding to it:

"except that in the case of Edmund J. Pelletier his services
404 were dispensed with because his services were unsatisfactory."

In other words, he was discharged before the rest of the crew, because his services were unsatisfactory, and I would like to add that to my answer.

Trial Examiner SEAGLE. And your answer stands as to the rest of the crew?

Mr. MCCORVEY. Yes; except as to Pelletier. He was discharged because he was unsatisfactory, but I did not know that until yesterday.

Mr. HOSKINS. Mr. Examiner, I object to any further amendment to this answer at this time.

The respondent, pursuant to the rules and regulations, filed this answer with the Regional Director of the Board in New Orleans within the time stated. The Board's case was built on the pleadings as then in existence. The Board has already placed Mr. Pelletier on the stand, as a witness, and to permit the respondent to come

along at this time and inject a new defense as to this witness, I think, should not be permitted.

Mr. McCONVEY. I have not injected anything new that the gentleman did not already know about, and I did not know until he came on the stand that he was discharged because his services were unsatisfactory, when Captain Nicolson told me. I did not want to misstate the facts. The others were discharged on account of
405 not being members of the I. S. U., but, in the case of Pelletier, he was discharged because his services were not satisfactory, and I think that it is within the discretion of the Examiner to permit the amendment to the answer to conform to the facts. There is no surprise or anything new that I am springing on the gentleman, and I am merely putting that in there to meet his own evidence.

Mr. HOSKINS. I really distinguish as to the surprise. We had a right to rely on the answer as filed, and the answer says the only reason the employees listed in the complaint were not discharged is because they were not members of the I. S. U., and to come along now and say that this man was discharged for another reason, particularly, is surprise.

Mr. LUSTIG. Particularly after the employee was on the stand and told his story. Unless, Mr. Examiner, you will permit us to have a rehearing on that particular employee's case, which is to determine whether or not he was discharged——

Trial Examiner SEAGLE. That is a proper request. I would permit you to recall Mr. Pelletier for any further testimony you may think necessary, in view of the amendment.

Mr. LUSTIG. Are we going, Mr. Examiner, to have continual amendments here, so that we would have to shift our grounds continually in order to meet the desires of the respondent——

Trial Examiner SEAGLE. Well, I don't intend to permit con-
406 tinual amendments in this matter, but I will grant the present motion with the understanding you may recall Mr. Pelletier for any additional examination you may think necessary.

Mr. HOSKINS. And may I have an exception to your ruling?

Trial Examiner SEAGLE. You may have an exception.

JOSEPH B. MORROW, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. BELL:

Q. What is your name?
A. Joseph B. Morrow.
Q. What is your address?
A. 5 Joachim Street, Mobile, Alabama.
Q. What is your occupation?
A. Seaman.
Q. How long have you been going to sea, Mr. Morrow?
A. About eight and a half months.

Q. Now, tell us from what ports you have sailed?
A. Mobile, New Orleans—you mean ports I have sailed from?
Q. That's right.
A. Mobile; Providence, Rhode Island; Corpus Christi, Texas.
Q. Give us the names of the different lines, steamship
407 lines, for which you have sailed?
A. The Standard Oil Company and the "Bienville," for the Waterman Lines.
Q. No; you misunderstood my question. I said to give the names of the steamship lines for which you have sailed.
A. The Waterman Steamship Corporation and the Standard Oil Company are the only two.
Q. When was the first trip that you made for the Waterman Steamship Corporation?
A. About October 3, 1936.
Q. What boat did you sail on then?
A. "Pan Royal."
Q. Did you sign articles on the "Pan Royal"?
A. Yes.
Mr. McCorvey. That is not a Waterman ship. We object to that. That ship belongs to an entirely different corporation than the Waterman Steamship Corporation and has nothing to do with us.
Mr. Bell. Well, let the evidence in, Mr. Examiner——
Trial Examiner Seagle. That is not a ground for objection to the testimony. You can disprove that testimony by other means.
Q. The "Pan Royal"——
Mr. Bell. Yes, he can set up a defense to that at the proper time.
408 Trial Examiner Seagle. The objection is overruled.
Mr. McCorvey. We except.
Q. The "Pan Royal," you say, was the name of the ship?
A. Yes, sir.
Q. When did you sail on it?
A. October 3, 1936.
Q. From where?
A. From Mobile.
Q. And did you sign articles on that ship?
A. Yes, sir.
Q. Where did you go?
A. We went to New Orleans; Philadelphia; Hoboken, New Jersey, New Bedford, Massachusetts; Boston, Massachusetts; and Greenpoint, New York; and Panama City, Florida.
Q. What were your duties on that ship?
A. Mess man.
Q. What are the duties of a mess man?
A. To wait on the Captain, the mess, the Chief Engineer, and any of the other officers.
Q. When was the last trip you made for the Waterman Steamship Lines, Mr. Morrow?

A. On the "Bienville."
Q. Where did you sail from on the "Bienville"?
A. From Mobile.
Q. What time?
409 A. May 6, 1937.
Q. What were you on this ship?
A. I was a waiter.
Q. Where did you go on this ship?
A. We went to Tampa, Florida; Le Havre, France; Antwerp, Belgium——
Trial Examiner SEAGLE. Is that important? What difference does it make where the ship went?
Mr. BELL. I am just trying to establish, Mr. Examiner, if you will bear with me, some points where this ship went, where certain events took place. I want to bring out a particular event.
Q. I will ask you if you went to Le Havre, France, on this boat?
A. Yes.
Q. Now, just in your own words, Mr. Morrow, state what took place in Le Havre, France.
A. In Le Havre, France, we held a meeting.
Q. Just a moment. Let me ask you this question first. I will ask you if at the time you sailed on the "Bienville" from Mobile you were a member of the I. S. U.?
A. Yes, sir.
Q. Now, continue with your statement as to what took place in Le Havre, France?
A. The whole crew held a meeting on the "Bienville," and
410 during the meeting they all agreed to change the I. S. U. to the N. M. U.
Q. And, as a result of that, do you know of your own knowledge what was done?
A. There was a letter written and sent either to Tampa, Florida, or Mobile, Alabama, I don't know just where, for the agent of the N. U. M. U. to meet the ship.
Q. And did you make the port of Tampa on the return trip?
A. Yes, sir.
Q. All right, tell us what took place at Tampa?
(Discussion off the record.)
Q. I will ask you if you joined the N. U. M. U. in Tampa?
A. Yes, sir.
Q. Who solicited your membership?
A. The whole crew agreed to join the N. M. U.
Q. And you did join the N. M. U. in Tampa?
A. Yes, sir.
Q. What time did you arrive at Mobile?
A. On the night of July 5th.
Q. Mr. Morrow, in the ports from which you have sailed, and from your own knowledge, I will ask you if it is a custom for the mem-

bers of a crew on board a ship, which has just returned, to be given preference on this ship for its next voyage?

Mr. McCorvey. Mr. Examiner, I want to renew my objection, which I have made so many times, and which you have overruled.

411 I object to the question unless it is limited to ships which come into ports and are tied up for repairs and ships which go on drydock for repairs, because we have no situation, under the undisputed evidence in this case—in this case the two ships came in and one of them was tied up for repairs and one went into drydock, and what might be the custom where ships come into port for prompt reshipment, would throw no light on the controversy before us.

Trial Examiner Seagle. The objection is overruled, and to make it unnecessary for you to repeat that objection, I will state that you will have an exception to all questions along that line.

Mr. McCorvey. We except to the ruling and ask for an exception to all of this testimony.

Trial Examiner Seagle. Yes.

Q. Do you recall the question I just asked you?

A. Yes, sir.

Q. All right, will you answer the question?

A. I have been on one ship for six continuous trips and I got paid off and signed off and then signed right on then.

Q. You made six continuous trips?

A. Yes, sir.

Trial Examiner Seagle. On the "Bienville?"

The Witness. On the "Pan Royal."

Q. At the end of the sixth voyage, what took place, why

412 didn't you sail the seventh time?

A. I quit. I could not better myself on the "Pan Royal" and I thought I would make a change to another ship to better myself.

Q. Were you given a discharge at the end of the sixth trip?

A. Yes, sir.

Q. Were you given a discharge at the end of the previous trips?

A. No, sir; I was given a continuous discharge.

Q. You were not discharged?

A. No, sir.

Q. That was when you left the boat?

A. Yes, sir.

Q. So, I will ask you again, then, from your experience and your knowledge, is it true that a crew is given preference to sail again on a ship, the crew that has just come in on the boat is given preference to sail on this boat's next voyage?

A. Yes, sir.

Q. Do you know whether or not this custom has been carried out on the Waterman Lines, the Waterman boats?

A. Yes, sir; in the seven and a half months I worked for them it has.

Q. What is the custom, from your experience, Mr. Morrow, as to whether or not the crew, or the member of the crew, gets in
13 touch with the officials of the boat, or the officials of the boat are supposed to contact the member of the crew when a starting ut on another voyage; or what is the custom?

A. Starting on another voyage, it is the custom of the crew to be sked if you are going to make another trip. It has always been one on every trip I made, and I was always asked to make another rip a day or two days ahead of getting into the home port.

Q. You were asked whether or not you intended to make another rip?

A. Yes, sir.

Q. Do you know from your own knowledge whether the unions ecognize this custom?

A. Yes, sir.

Q. From your own knowledge and experience, answer this: So far s unions are concerned, and the other members, or members of a rew, is there a vacancy until a member of a crew declines to sail gain?

A. No, sir.

Q. So you say there is not a vacancy until a member of a crew leclines to sail again?

A. No, sir; there is no vacancy.

Q. From your experience and your knowledge, what is the custom s to whether a crew is retained when a boat goes into drydock for epairs?

A. To my personal knowledge I have known—I have not had
14 that experience, but I do know when I joined "Pan Royal" was in Alabama Drydock and it was the last week in October, and went to meet the "Pan Royal" at the Alabama drydock and she was ulling on out and I met here at the Waterman dock.

Q. So, the "Pan Royal" was in drydock when you joined it?

A. No, sir; not when I joined it, but it was coming out and I came p and met it at the Waterman slip.

Q. Did they have a crew on the boat when it came out of drydock?

A. Yes.

Q. Did you have any conversation with that crew?

A. Well, the second cook went on, and he had been working on here all that week.

Q. And do you know how long the "Pan Royal" stayed in dry-ock?

A. No, sir; I don't.

Q. Have you, Mr. Morrow, worked with the Waterman Line since uly 6th?

A. No, sir.

Q. What date was it you came into Mobile, July when?

A. July 5th, and I got paid off July 6th.

Q. And have you worked with the Waterman Line since that day?

A. No, sir.

Q. What were your wages on the "Bienville"?

415 A. Fifty-seven dollars and fifty-cents.

Q. Have you earned any money since then?

A. Yes, sir; I made one trip on the "Silver Arrow," a Standard Oil steamer.

Q. And would you like to have your job back with the Waterman Lines?

A. Yes, sir.

Q. What was your salary on the "Silver Arrow"?

A. Fifty-five dollars a month.

Q. And how long were you on the "Silver Arrow"?

A. Twenty-nine and one-half days.

Mr. BELL. That is all.

Cross examination by Mr. MCCORVEY:

Q. Mr. Morrown, I believe you said you were a member of the I. S. U.?

A. Yes, sir.

Q. You, of course, were familiar with the contract between the Waterman Steamship Corporation and the I. S. U., under the terms of which it was to give preference of employment to their members, were you not?

A. I am not familiar with that.

Q. I say, you knew they had a contract with the I. S. U. when you got your employment with Waterman's through the I. S. U.?

A. Yes, sir.

Q. And you knew the Waterman Corporation was under

416 contract with the I. S. U. to employ their seamen through that organization, do you not?

A. Yes.

Q. In fact, you were given, by Mr. Ross, or by someone, a copy of the contract on your ship, were you not?

A. No, sir.

Q. You have seen the contract, have you not?

A. No, sir.

Q. Now, you don't know of anyone, other than members of the I. S. U., that the Waterman Steamship Corporation employed since they entered into that contract, do you?

A. No, sir.

Q. How long have you been going to sea, Mr. Morrow?

A. Eight and one-half months.

Q. That is the total of your seafaring experience?

A. Yes, sir.

Q. Are you entirely familiar with seafaring terms in shipping circles and maritime circles?

A. Just what I went through from personal experience.

Q. And when you speak of a ship going into port for prompt reshipment, what do you understand from that?

A. I always reshipped on the same ship.

Q. You did not understand. When a ship goes into port for prompt reshipment, what do you understand that to mean in maritime circles, when you say a vessel goes into port for
117 prompt reshipment, what does it mean?

Trial Examiner SEAGLE. Wouldn't it be proper to first ask the witness whether he has ever heard that term before?

Mr. MCCONVEY. I thought I had qualified him by showing his experience at sea.

Q. Have you ever heard of the term "prompt reshipment"?

Trial Examiner SEAGLE. Have you ever heard the expression "prompt reshipment" before you came here this morning to testify?

The WITNESS. No, sir.

Q. You don't know what "prompt reshipment" means?

Mr. HOSKINS. He said he hasn't heard that expression.

Q. You don't know how it is used in maritime circles?

A. (No answer.)

Q. Do you remember—you talked of the "Pan Royal"—she was only one day in drydock, wasn't she?

A. I don't know, sir.

Q. Were you on it?

A. I got on her at the state docks.

Q. She was only in drydock one day?

A. I don't know.

Q. I understood you to say that you had stayed on the "Pan Royal" while she was in drydock?

A. No, sir.

Q. Now, at the time that you signed articles and was shipped
118 out on the "Bienville," all the members of the crew were members of the I. S. U., were they not?

A. Yes, sir.

Q. And when you got back to Mobile, after you signed off and had been released and discharged before the United States Shipping Commissioner, with the rest of the crew in the presence of the Master——

A. Yes.

Q. You were discharged then, weren't you?

A. I did not even know I was discharged after I was paid off.

Q. You were paid off and discharged at that time, were you not?

A. At that time I was not; no, sir.

Q. You did not know that you were discharged, or that you had discharged the ship from all liability and the ship discharged you from all liability when you signed up this release before the shipping commissioner?

A. No, sir; I didn't.

Q. Did you understand that you were still working for the Waterman Steamship Corporation?

A. I was under the understanding that I was to sign on again.

Q. That you had signed on again?

A. That I was to sign on again.

418½ Q. When they were ready to go?

A. Yes, sir.

Q. How long did you figure that the Waterman Steamship Corporation was obligated to hold your job open for you?

A. I was under the understanding that a man had the privileg of rejoining the same ship.

Q. Well, suppose the Waterman Steamship Corporation wante you to rejoin, were you obligated to go and rejoin, or did you hav the right, during the month that this ship was being repaired, to g and ship on another vessel?

A. I think so.

Q. Then, as you understand it, the Waterman Steamship Corporation were obligated to hire you, but you were not obligated t hire to them, were you?

A. I worked for the Waterman Steamship Corporation the firs seven and a half months of my sea life.

Q. I understood that when you signed off before the United State Shipping Commissioner you understood your employment wa terminated, did you not?

Trial Examiner SEAGLE. I thought we had agreed yesterday th articles of discharge made no difference, in view of the fact that th contract provides that members of the crew are entitled to reem ployment in the case of prompt reshipment?

Mr. MCCORVEY. It doesn't say only that, it says that they are no required to join the I. S. U.

419 Trial Examiner SEAGLE. Not required to join the I. S. U but in the case of prompt reshipment, there is always a dis charge and the articles are signed again in every case.

Q. When you signed those articles to ship on the "Bienville," yo signed up for one voyage, did you not?

A. For six months or more, I believe.

Q. You thought your articles signed you up for six months o more?

A. I thought so.

Q. And did all of the crew sign up in the same manner?

Mr. HOSKINS. I object.

Q. Do you know?

Trial Examiner SEAGLE. Objection overruled.

Q. If you know, I will put it that way?

A. As far as I know.

Q. Didn't they tell you one voyage not exceeding six months?

A. It may have been that way, I seen six months on the article

Q. But at the time you signed up, your recollection is that yo signed up for one voyage not exceeding six months?

Mr. HOSKINS. I object to that.

Trial Examiner SEAGLE. On what ground?

Mr. HOSKINS. He is stating his recollection and making a stat ment for the witness.

Trial Examiner SEAGLE. Objection overruled.

420 Q. How about it, Mr. Morrow?

A. As far as I can remember, there was six months on the articles.

Q. Suppose at the end of six months you were in some foreign port, is it your idea that they would have dumped you off in Australia?

A. That is not the customary thing to do.

Q. You don't recall that you signed up for one voyage not exceeding six months?

Mr. BELL. That is the third time he has been over that, Mr. Examiner.

Trial Examiner SEAGLE. The witness has already answered that question, Mr. McCorvey, several times.

Mr. MCCORVEY. Under Section 572, Title 46, of the United States Code, dealing with voyage or terms for which seamen may be reshipped: reshipment, and this contract provides for reshipment, I wish to call this to the Examiner's attention at this point.

"The master of a vessel in foreign trade may engage a seaman at any port in the United States, in the manner provided by law, to serve on a voyage to any port, or for the round trip from and to the port of departure, or for a definite time, whatever the destination.

421 "The Master of a vessel making regular and stated trips between the United States and foreign countries may engage a seaman for one or more round trips, or for a definite time, or on the return of such vessel to the United States may reship such seaman for another voyage in the same vessel in the manner provided by law."

Now, in discussing the definition of "reshipment," there was a decision rendered by Judge Toulmin, in this district at that time, in the case of Ravesies against the United States, reported in 35 Federal Reporter at page 918, in which he said——

Mr. HOSKINS. Mr. Examiner, I object to the reading of any decisions of a local court. I don't see where they can bind the Board.

Trial Examiner SEAGLE. The objection is overruled. I think the reference to the decision will be sufficient for the record.

If you want to discuss the case, I shall be glad to hear you off the record. The discussion of the case will be off the record.

(Discussion off the record.)

Q. I understood you to say that you signed off before the Shipping Commissioner?

A. Yes, sir.

Q. I believe you testified that you did not consider that you were no longer bound to go back to the Waterman Steamship
422 Corporation if you got other employment, if you had a chance to ship out before that vessel sailed, you had a right to do it?

A. I was waiting for that one ship.

Q. But that you had the right to go out if it took too long?

A. I was still waiting for it.

Q. Do you want to change that statement now?

A. No; I had the right to go out.

Q. In other words, you had a right to accept other employment, and you were no longer bound to wait until that ship was repaired?

A. I was still waiting for it.

By Mr. HOWARD:

Q. Mr. Morrow, as I understand it, at Le Havre, France, on this voyage, the crew were all members of the International Seamen's Union, is that correct, as far as you know?

A. Yes, sir.

Q. And so they all decided to quit the International Seamen's Union and join with the National Maritime Union?

A. Yes, sir.

Q. Now, did they discuss in that meeting that the International Seamen's Union had that agreement with the Waterman Steamship Corporation by which their members would get preference? Was that mentioned?

A. I do not recollect.

423 Q. Now, may I ask you, Mr. Morrow, what was your understanding in joining the new union as to the plan of the new union in reshipping when you got back to Mobile; what was the idea, and how did you decide to manage it with respect to your contract, you had left the International Seamen's Union, hadn't you?

Mr. LUSTIG. Mr. Examiner, I object to the form of the question and it is probably confusing to the witness.

Trial Examiner SEAGLE. I think you are assuming a fact which may not be true. It would first be necessary to ask the witness whether he ever considered that matter at all.

Q. I will ask you if you did consider that proposition, then, what you decided when you gentlemen joined the National Maritime Union at Le Havre, France, did you consider the proposition of getting jobs from the Waterman Steamship Corporation in the future?

A. I don't remember just exactly.

Q. Did you have any plans by which you could keep working or keep your positions on the boats of the Waterman Steamship Corporation?

Mr. LUSTIG. I object to the question; I think that it is immaterial. They were then in the employ of the Waterman Steamship Corporation, and our contention is that that employment did not cease until the men either voluntarily quit the Waterman Steam-

424 ship Corporation or were discharged for just cause. Therefore, why should they be concerned with a plan?

Trial Examiner SEAGLE. Objection sustained. I don't think an answer to that question would be relevant.

Mr. HOWARD. May I ask the Examiner this question, in order to save time.

In order to save an exception on the rulings, do I have to ask for it each time, or am I deemed to have it as in the Courts of Law?

Trial Examiner SEAGLE. If you ask for an exception, you will be deemed to have been granted it.

Q. Can you tell me, Mr. Morrow, how you claim to have the right of reshipment on this same vessel, when you have just testified that your right to go on the ship in the first place to get your job was because you were a member of the International Seamen's Union?

Mr. LUSTIG. I object to that question. There is no such testimony.

Trial Examiner SEAGLE. The objection is sustained.

Mr. HOWARD. We except.

Q. You know that the reason you got your job on the Waterman's ships is because you were a member of the International Seamen's Union.

Mr. LUSTIG. I object to that question. There is no evidence here that that is the reason why he got the job.

Mr. MCCORVEY. I think he testified to that himself.

425 Mr. HOWARD. He just testified to that himself, Mr. Examiner.

Trial Examiner SEAGLE. He testified he was a member of the International Seamen's Union when he got his job, but he did not say that that was the reason he got the job.

Q. That was your understanding, that you got your job on this ship, the "Bienville," through your membership in the International Seamen's Union?

A. Yes, sir.

Q. And you went through the Union Hall by a system of rotation to get the position, didn't you?

A. Yes.

Q. And you got the position by being a member of the International Seamen's Union?

A. Yes, sir.

Q. Now, can you explain to the Examiner how you claim to have any right, after you quit that union during a voyage, how you claim the right to reship on that vessel?

Mr. LUSTIG. I object.

Mr. BELL. And I object.

Trial Examiner SEAGLE. I think you are merely getting into an argument with the witness which cannot throw any light on the issues in this case. The objection is sustained.

Mr. HOWARD. We except.

Q. But you do claim, do you not, that you did have the

426 right, although you abandoned the International Seamen's Union and joined the National Maritime Union, you do claim that you had the right, notwithstanding the contract which you say you were aware of, to reship again on the Steamship "Bienville," that is the right that you claim; is it not?

Mr. BELL. We object to that.

Trial Examiner SEAGLE. Read the question, Mr. Reporter.

(Question read.)

Trial Examiner SEAGLE. Again I think you are merely arguing questions of law with the witness.

Mr. BELL. He is putting it on the basis that he knows the interpretation of the contract, Mr. Examiner.

Trial Examiner SEAGLE. There isn't any question but that he wants to reship with the Waterman Steamship Corporation, or he would not be here. That is the purpose of his testifying, and also that he claims the right to reemployment. But, I do not see that his answers to argumentative legal propositions would be of any use in deciding this case.

Mr. HOWARD. We except, your Honor.

Mr. LUSTIG. Further, the question is founded upon the belief that the present agreement between the I. S. U. and the Waterman Steamship Corporation is a closed-shop agreement.

Trial Examiner SEAGLE. Well, the objection is sustained.

Q. When you got to Mobile, and were paid off at the ship, were you discharged at Mobile from service on the ship?

427 A. No, sir.

Q. Did you talk to any official on the ship or any official of the Waterman Steamship Corporation regarding going back on the ship for another voyage?

A. Yes.

Q. Who did you talk to?

A. Captain Lum.

Q. What did you ask him? Just tell us the conversation between you and the Captain, now, respecting your going back on another voyage?

A. Well, the Captain asked me would I make another trip and I said, "Yes, sir."

Q. Then when did you find out that you were not to make another trip?

A. About an hour after I was paid off the Steward told me, "You changed your I. S. U. book to the N. M. U. and you are fired." And he told me to pack up my clothes.

Q. When you joined this National Maritime Union, isn't it a fact that you and the other members that were in this conference at L. Havre, France, joined the National Maritime Union with the idea——

Mr. BELL. I object.

Trial Examiner SEAGLE. Just one moment. Permit him to finish his question. You cannot object before the question has been put.

428 Q. (Continuing.) That when the ship got back to Mobile that you would have a better chance to go out on the ship at the port of Mobile, as a member of the National Maritime Union than you would have if you continued to be a member of the International Seamen's Union?

Mr. LUSTIG. I object to that question. It calls for a conclusion, and is speculative as to what was in the witness' mind at the time.

Trial Examiner SEAGLE. The objection is sustained.

Mr. HOWARD. We except.

Q. At the time that you joined the National Maritime Union, wasn't it understood and agreed between you and the other members of the National Maritime Union that in the competition, the struggle, you might say, then existing between the International Seamen's Union and the National Maritime Union, that the National Maritime Union was about to get the best of the International Seamen's Union and by joining up with the National Maritime Union that you would then have a better chance to keep your jobs at the port of Mobile?

Mr. LUSTIG. I object to that as calling for a conclusion.

Trial Examiner SEAGLE. The objection is sustained.

Mr. HOSKINS. Mr. Examiner, I hate to cut in at the present time, but it seems to me that when Mr. Howard appeared in this court yesterday as attorney for the Seamen's Reorganization Committee and was given permission to intervene, his rights as such intervener were defined by the Examiner and he is abusing that permission.

Trial Examiner SEAGLE. That is true, and that is one of the reasons I sustained the objection, Mr. Howard. You have been going a good deal beyond the permissible scope of your intervention.

Mr. HOWARD. That is all.

Trial Examiner SEAGLE. Any redirect?

Redirect examination by Mr. BELL:

Q. Mr. Morrow, there has been much said about a discharge, or your discharge. I will ask you if at the time your articles expired on any voyage that you had made, that you considered you were discharged from that boat?

A. No, sir.

Recross-examination by Mr. MCCORVEY:

Q. Mr. Morrow, you said that the Steward told you you were fired?

A. Yes, sir.

Q. What was that steward's name?

A. Pelletier.

Q. That is the fellow who testified here yesterday?

A. Yes, sir.

Mr. MCCORVEY. Mr. Examiner, do I understand this, that the questions asked by Judge Howard would have been proper questions if asked by me? If so, I would like to ask the same questions which you have already ruled as inadmissible.

Trial Examiner SEAGLE. No; I think the type of questions Mr. Howard was asking were inadmissible for other reasons also.

Mr. MCCORVEY. I just want the same rulings and the same exceptions, if that is agreeable to the Examiner. I wanted to bring out the same testimony which he sought to bring out.

Trial Examiner SEAGLE. As to what he thought about various things?

Mr. McCorvey. As to what his intention was in joining, whether he thought he had to belong to the N. M. U. in order to get his job?

Trial Examiner Seagle. Well, the ruling will be the same.

Mr. McCorvey. That is, considering that I asked the same questions.

Trial Examiner Seagle. That is right.

Mr. McCorvey. And I have an exception.

Examination by Trial Examiner:

Q. I believe that you testified you made six trips on the "Pan Royal"?

A. Yes.

Q. Do you remember how long the periods were that elapsed between the different trips?

431 A. Twenty-eight days.

Q. Twenty-eight days?

A. Yes.

Q. Between each trip?

A. Yes.

Q. You were twenty-eight days in port between each trip?

A. No, sir.

Q. What do you mean?

A. Thirty-six to forty-eight hours in port.

Q. Was the ship ever laid up in drydock during any of those trips?

A. Not during them six trips; no, sir.

Q. Have you ever been on a ship that was laid up in drydock after her voyage?

A. No.

Trial Examiner Seagle. This witness is excused.

James C. Stewart, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified, as follows:

Direct examination by Mr. Bell:

Q. What is your name?

A. James C. Stewart, the C stands for Clayton.

Q. Where do you live?

A. 607 Government Street, Mobile, Alabama.

432 Q. What is your occupation?

A. Seaman.

Q. How long have you been a seaman?

A. Well, I started in January 1936.

Q. From what ports have you sailed?

A. Galveston, New Orleans, Mobile, Philadelphia, Marcus Hook, and Houston.

Q. What lines have you sailed on?

A. Well, I have been with the Sinclair Oil Company, the Waterman Steamship Lines, and the Hilcom Transportation Company.

Q. When was the first time that you sailed for the Waterman Steamship Corporation?

A. Well, I have the reference to my discharge——

Q. All right, you may refresh your memory from your discharge.

A. May 31, 1936.

Q. When was your next trip?

A. 7-31-36.

Q. When was your next trip?

A. 10-23-36.

Q. Suppose you go back over those papers that you are referring to and give me the name of each boat?

A. The first boat that I was on for the Waterman Steamship Corporation was the S. S. "West Kyska," and I shipped on
433 5-31-36, and paid off on 7-18-36. In the meantime I stood by on this boat until she was ready to make her next voyage, and I signed on articles again.

Q. Where did you stay by on the boat, what port?

A. Well, I was paid off in Gulfport, Mississippi, and I made the gulf picking up cargo, working our regular jobs. We came into Mobile and they cleaned the boilers and done other work around there, and I stayed by for the trip and I signed on.

Q. And how long was that, how long was the ship in Mobile?

A. Let's see, between 7-18-36 and 7-31-36, between the 18th and the 31st.

Q. This was from July 18th to July 31st?

A. That is right.

Q. And you were in Mobile all this time?

A. No; not Mobile, picking up cargo, but not in Mobile. Picking up cargo between the ports; Gulfport, we spent five days there, and before we ever went out to pick up this cargo they signed off on this voyage, and then we made Panama City, and Pensacola, and then came back into Mobile.

Q. Now, when was the last trip that you made for the Waterman Steamship Corporation?

A. The last trip was on the S. S. "Fairland."

Q. And where did you sail from on that boat?

A. From Mobile.

434 Q. What was the date?

A. I left here June 12, 1937.

Q. And you were out——

A. (Interrupting.) I was on the "Fairland."

Q. Where did you go, what ports?

A. Well, we went to Porto Rico; San Juan, Mayaguez, and Ponce.

Q. And when did you arrive at your destination—what was the port of destination on that trip?

A. Well, that was—you know, I never signed no articles on that trip, in front of the Commissioner.

Q. You did not?

A. No; but on that trip there we were paid off by the Commissioner. They usually sign two trip articles, I happened to be on the trip that they had already made, and then I went on, see, after they made one trip.

Q. And where were you paid off?

A. At Mobile.

Q. What date?

A. July 5, 1937. We were paid off before the Commissioner, but we were not required to sign any discharges or anything. We were just given our money and we signed the books, or the pay roll.

Q. And I am asking you now if you know why you were not required to sign articles on this trip?

435 A. No; I do not know. I do not know why, unless the job was a last-minute job, because when I took her out she was supposed to sail at about four o'clock and I went on board about three o'clock.

Q. Were you a member of the I. S. U. at the time you sailed from Mobile on this boat?

A. Yes, sir; I was.

Q. And did you make the port of Tampa on this trip?

A. On the return voyage we did.

Q. Just tell the Examiner what took place at Tampa?

A. Before making this boat I happened to pick up a paper called the Pilot and read it over thoroughly and I got interested in the N. M. U. from the paper, so, when I went aboard the ship I was reading it, and the boys all wanted to read it, the crew, the unlicensed personnel; so, we got there to talking about it and decided when we came back we would all change our books to the N. M. U., as that organization was more beneficial to the sea, and when we got to Tampa, why, the "Bienville" was in port, so we held a meeting on board the ship and decided that we wanted to talk to the N. M. U. delegates and the Mate would not allow them to come up on the ship; he was on the gangway watch.

Q. Who was the Mate on that ship?

A. That I don't know, I don't remember the name. He was the Chief Mate at the time, the First Officer, as you might

436 call him.

Q. I will ask you this, if you know who it was that came on the "Fairland," the S. S. "Fairland," at Tampa?

A. At Tampa?

Q. Yes; who were the delegates?

A. Well, there was James Bennett, and Booth, and Phillips; I believe one of them was a delegate and two were organizers or agents, or something.

Mr. Bell. Mr. Examiner, I would like to state here why I am going into detail with this particular witness?

Trial Examiner Seagle. I was just about to interrupt. Will this witness' testimony be different from the others?

Mr. Bell. It will be different, because he is on a different boat. This is the S. S. "Fairland" and there are some particular facts I want to bring out through this witness.

Trial Examiner Seagle. I understand that.

The Witness. We requested the Captain to allow these delegates to come aboard——

(Discussion off the record.)

Q. You did hear Mr. Bennett's testimony, did you, Mr. Stewart?

A. I did.

Q. Do you then say that you agree with Mr. Bennett's testimony?

A. Well, I agree with Mr. Bennett's testimony. Yes, sir;
437 I agree with it.

Q. Is it substantially correct as to all of the facts, or did he fail to disclose facts of which you are aware and have knowledge?

A. Well, it is substantially correct, as far as I heard it, all I heard was what he stated here, yes, and he did not miss anything, except that he did not know me, well, he did not mention our names; he did not know all of us, that is all. I don't know the names of all of the crew myself.

Q. You say you don't know all of the crew?

A. No, sir.

Q. Well, as a result of Mr. Bennett's coming on board the S. S. "Fairland," did you join the N. M. U.?

A. Not as a result of his coming on, no. We changed because we felt that we want to better our position, see?

Q. Just let me ask you this question. Did you join the N. M. U. at Tampa?

A. Sure, yes, sir.

Q. And then, when did you arrive in Mobile on the S. S. "Fairland?"

A. Let's see, we got here the 5th of July, early in the morning; some time in the morning, but I don't know the hour.

Q. How long did the S. S. "Fairland" remain in Mobile before making another voyage?

A. Well, the S. S. "Fairland" sailed within a week, I believe
438 it was something like between five and seven days.

Q. Were you a member of the crew of the S. S. "Fairland" on its next voyage?

A. No, sir. When we came in here, why, we sailed in and went to drydock, and I was notified, with the rest of the members of the crew, by the Acting Chief Engineer, Mr. Chisholm at that time, and Captain Norville, that Captain Reed was coming aboard ship; he was either the Port Captain or somebody from the Waterman Corporation, and that, as we took out N. M. U. books, he would not need us any more and would not allow the N. M. U. men to sail on his ships.

Q. Who told you that?

A. Captain Norville and the Chief Engineer at the time, the Assistant, or the Acting Chief Engineer Chisholm.

Q. What, Mr. Stewart, did you do then?

A. Well, I asked Captain Norville and Chief Engineer Chisholm, I said, "Are we through now?" and he said, "Well," he said, "I would not say you are fired yet." He said, "This ship is going to stay in drydock until Friday." This happened to be on Monday he was doing the talking, Monday, the 5th of July, and he says, "When this ship goes back on the Island run, I would like to have you boys sail with me as," he says, "I know you are a good crew, and you have been with me on this trip" and he says, "I like your work" and as that happened, why, Captain Reed came down there about then, and
439 so, I asked Captain Reed the same thing. I asked Captain Reed, I said, "Captain Reed, do we have to get off this ship"? He said, "Well," he said, "The ship is going to be laid up in the drydock," he says, "you will know by Friday." I said, "Well, do we have to get off because we carried the N. M. U. book, because we changed to another organization"? and he said, "I will not take any of you again on my ship," he said, "but if you take your books and give them back to Scotty Ross of the I. S. U. you can keep your jobs."

Q. Were you given any work after you left the "Fairland"?

A. Yes, sir; at that time——

Q. Who gave you this work?

A. Captain Reed told me to go down and see Mr. Ingram at the State Docks, and that he would put me on in the shore gang. He said that they got a job there and they have a shore repair crew, and I told the rest of the boys off of the "Fairland" and the "Bienville" that were up at the N. M. U. hall at the time, that they could go to work on the shore gang; that is where they heard that from.

Q. Now, as members of the shore gang, that does not consist of any work on the boat?

A. We went down there, but we did not work out of the shop. We worked under the supervision of Mr. Reynolds, the First Assistant Engineer on the "Bienville," on board the "Bienville."

Trial Examiner SEAGLE. You worked on the "Bienville"?

440 The WITNESS. Yes.

Trial Examiner SEAGLE. While you were on the shore gang!

The WITNESS. Yes, sir.

Q. But you were under Mr. Reynolds?

A. Yes, sir.

Q. Go ahead.

A. While I was working there, I worked three and a half days, and on the afternoon of the third day I happened to have my union button in my cap, and my union book in my pocket, and we were eating lunch up at the outside office of the dock——

Q. You say you had your union button on?

A. Yes, sir.

Q. What union button?

A. N. M. U. button.

Q. All right.

A. When the port engineer at that time, I believe, I don't know if he was port engineer or assistant port engineer, but Mr. Ingram,

I know him, he came up to me and he said, "You will have to take that button off, Stewart, if you want to stay on our property here" and I said, "Wait a minute, Mr. Ingram, I don't see why you do that" and he said, "You are not going to keep on this job with that button, with that N. M. U. button on, or by carrying that book"
441 and he said, "Why don't you be sensible" and he said, "Why don't you be sensible and go down and see Scotty Ross and get back in there" and he said, "I will give you a job on any of these ships then." I told him I could not see it that way, because I was in the N. M. U. at the time, and he said, "Well, you will have to get off the dock"; so he fired me again.

Q. What day was this?

A. I don't remember the date, but that was after I came off the "Fairland."

Q. But you have not worked since that time?

A. I have worked since then, yes, sir; but not for the Waterman Steamship Lines.

Q. For the Waterman Steamship Corporation?

A. No, sir.

Q. What type work was that that you were doing on the docks?

A. Well, it was the usual run of repairs, and things like that that they was doing, that we do on most any ship when she ties up for a few repairs.

Q. And I believe you stated that was on the "Bienville"?

A. That was on the "Bienville."

Q. How many were working with you on this work?

A. Ten of the old men that was on the "Bienville" and the "Fairland" crew, but about seventy-five Waterman men, the shore gang.

442 Q. When you were fired again, as you stated, Mr. Stewart, had the work been completed?

A. No, sir.

Q. Was there still work to do?

A. Well, sure, there was pe/nty of work to do.

Q. And how many were fired at the time that you were?

A. Well, on that day I happened to be the only one, but they waited until Saturday before they fired the other nine.

Q. Were you ten N. M. U. men?

A. Sir?

Q. Were the ten men, or the nine other men, that were working with you, were all of you N. M. U. men?

A. They were, they were part of the crew of the "Fairland" and the "Bienville."

Q. Was the work being performed on the "Bienville," Mr. Stewart, work that the crew could and would have ordinarily done?

A. Yes, sir.

Q. Were there any disturbances on the dock during the time that you were working there, Mr. Stewart?

A. No disturbances on the dock at all, just that I was told to get off the dock at that time on account of my button, my union button, that's all.

Q. Were you forced from this dock where you were working?

A. Yes, sir.

443 Q. In what manner?

A. Well, he told me if I did not get off their property that they would beat on me. At that time the I. S. U. had a few husky fellows laying around, fellows that would bump you or hit you on the head, or anything, around there.

Q. And did you attempt to go back at any time on the docks or on the boat?

A. Well, I went back after my pay.

Q. What took place then?

A. It happened to be on a Saturday, but before that I happened to go back to get my clothes off the "Fairland." I left my clothes on the "Fairland" when she was in drydock, and I slept on her when she was in drydock, with the understanding that on Friday I would sign articles and go back in the crew.

Q. You were led to believe you would be put in the crew?

A. Yes, sir.

Q. And, as a result, you left your clothes on the "Fairland"?

A. Yes.

Q. Now, what took place when you went to get your clothes?

A. Well, they had a policeman on the gangway, a man in uniform, and the I. S. U. crew was already aboard, three of the I. S. U. crew she had on her in drydock, that brought her up the river, because that morning when I went to breakfast they shifted the ship up the river, and I had to come down here to get my clothes, think-

444 ing I would get back in the crew, and I asked Captain Norville and Mr. Ingram, who happened to be aboard the ship that day, if I could sign, and he told me, they told me to get my clothes off the ship and "Don't come around any more" and they called me a radical and they said, "You belong with those radicals. Get off this ship."

Q. And you have been on the ship since?

A. No; I have not been on them ships since or any Waterman ships.

Q. I hand you the amended complaint in this case drawn by the National Labor Relations Board with the list of the employees on the S. S. "Fairland." I will ask you, Mr. Stewart, to look at this list and call out the names of the men that you know that joined the N. M. U. with you at Tampa?

A. Well, Columbus Anderson and Andrew Benron, Reese Bryars—no; I don't know him. I don't know if he was on that ship.

Q. Just give the names of those that you do know who joined.

A. I know Crawford, he was on the same watch I was on; Robert Crawford, James Dobbs, W. Gold, Herbert Hall, Otto K. Ortleb, Fireman, and C. E. Smith.

Q. Is that all?

A. Well, there are some names I am not familiar with; the bosun, I don't know whether that is his name or not.

Q. You just knew him as the Bosun?

A. It says Howard Bowen, Bosun. I don't know his name,
445 but we all called him "Bosun" on the ship.

Trial Examiner SEAGLE. Do you understand the question? The question is not merely whether you know these men, but whether they joined the union?

The WITNESS. Yes, sir; I saw them join.

Q. Do you know of your own knowledge whether or not Eric Butcher joined?

A. Yes, sir; he was a wiper, he was a wiper on board ship.

Q. And do you know of any member of the crew that did not join the N. M. U.?

A. I believe there was two A. B.'s, and one ordinary seaman, though I do not know their names.

Q. I will ask you to take that list again, Mr. Stewart, for the purpose of refreshing your memory, and tell me from that list the men, the names of those men, if you know, who were fired from the S. S. "Fairland" at the time that you were?

A. Why, all of those men that had N. M. U. books—Stewart——

Q. Are you looking at that list now?

A. Yes, sir.

Q. You stated that all of the names on that list, the men on that list had N. M. U. books?

A. As far as I know; yes, sir.

Q. And they were all fired at the same time that you were?

A. Yes. I see a name here that got me, Reese Bryars, able seaman. I don't know whether he was on that ship or
446 not. I know that fellow personally. I cannot recall whether he was on that ship or not, but I think he was.

Q. How long did you say, Mr. Stewart, you had been sailing the seas?

A. Since 1936, in January.

Q. Mr. Stewart, in the various ports from which you have sailed, and from your knowledge, what is the custom as to whether members of a crew stay at work when the ship on which they have just sailed is ready to start its next voyage?

A. Why, all of the ships I ever was on, the custom, as far as I know, is if you want to make another trip you just stay on the ship, keep working, until you are notified different, and if you sign articles again, why, someone tells the members of the crew that they are signing on, and you go up there and just sign in front of the Commissioner, and you make another trip.

Q. But the custom, as you know it, is that the members of the crew are preferred or are given preference to make the next voyage with this boat?

A. Yes, sir.

Q. Do you know whether that is the custom which has been prevailing with Waterman, or not?

A. Yes.

Q. What is the custom with respect to getting word to the crew by the officials of the boat when they come to make the
447 next voyage?

A. Well, the custom there is, if the crew is working aboard the ship, why, they will be notified by either the bosun or one of the sailors, or the Mate will tell him, that they are signing on, and you go up there and sign; that means that you are going to make the next voyage; or, like in my case, why, the assistant, the First Assistant Engineer asked if I want to make another trip, and I could refuse him or quit on him, but I told him "yes, I will make another trip."

Q. In your experience and knowledge, does the union recognize and sanction the custom of giving preference to the present crew?

A. Yes, sir.

Q. Going on the next voyage with the same boat?

A. Yes, sir.

Q. As far as the unions and the members of the crew are concerned, is there a vacancy in the crew if a member of the crew declines to sail again on the boat's next voyage?

A. Sir?

Q. (Question read.)

A. If the member of the crew declines, why, he quits automatically. Why, sure, there is a vacancy at that time; but, if the member don't decline, why, he still got his job, and nobody says nothing.

Q. Then, from your experience and knowledge, the mere
448 explanation of the articles does not create a vacancy in that crew, does it?

A. No, sir.

Mr. Bell. Mr. Examiner, the witness in making an answer to the question I asked him made this statement which was not responsive to the question at all, and I want to make a motion that it be stricken from the record—that he was hit over the head in some manner by the members of the I. S. U.

The Witness. I did not say I was hit on the head, I said that is what they said they would do.

Mr. McCorvey. Or that they had somebody up there who knew how to do it.

Mr. Hoskins. Yes.

Q. The statement was not that you were attacked by the I. S. U. members?

A. No, sir; I was told that that would be done if I went around the State Docks.

Trial Examiner Seagle. Do you move to strike that testimony now?

Mr. Bell. Yes, sir.

Trial Examiner Seagle. The motion is granted.

Mr. Bell. It was not responsive to any question.

Trial Examiner Seagle. The motion is granted.

Mr. Bell. I want my statement to conform to what he stated rather than what I understood him to say, that he
449 actually had been attacked.

Trial Examiner Seagle. Well, it is that testimony which will be stricken.

Q. On your last trip on the S. S. "Fairland," Mr. Stewart, what was your salary?

A. I was getting seventy-two fifty a month and seventy cents an hour overtime.

Q. Have you made an effort to get your job back with the Waterman Steamship Lines?

A. Yes, sir.

Q. What were you told, if anything?

A. I was told by Mr. Ingram, I talked to him about it, that if I went back through the I. S. U. and gave my N. M. U. book into the I. S. U. and became a member of that organization again, I would get a job with Waterman.

Q. And you were not permitted to sail with the S. S. "Fairland" on its next voyage after July 6th?

A. No, sir.

Q. Did you ask your superior officer for a position on this voyage?

A. Yes; I did.

Q. Have there ever been any complaints as to your work, Mr. Stewart?

A. Not to my knowledge.

Trial Examiner Seagle. Well, there is no complaint, as
450 I understand it, that any members of the crew were discharged for incompetence, except Pelletier. I don't think any examination along that line is necessary.

Q. I will ask you, Mr. Stewart, if you would like to get your job back with the Waterman Lines?

A. Yes, sir.

Q. How much money have you made since July 6th?

A. Well, I did not keep track of it, but I got a discharge here where I worked on board the "J. J. Cooney," an oil tanker.

Q. And what did you make on that trip?

A. Eighty dollars a month. I made about a hundred dollars.

Trial Examiner Seagle. You say you got eighty dollars a month?

The Witness. Yes, sir.

Trial Examiner Seagle. And do you have a discharge slip showing how long you were paid for?

The Witness. I worked from August 5th to September 28th, 1937.

Q. I will ask you if this trip on the "J. J. Cooney," that you just told us about, is all that you did since you worked for Waterman's on or about, or since, July 6th?

A. Yes, sir.

Q. Have you ever been on a ship when it went into drydock for repairs?

A. Oh, yes; I was on one of the Waterman ships, on the
451 S. S. "Yaka."

Q. How long did you stay in drydock?

A. Probably three or four days, or maybe longer.

Q. And were you retained on the crew when it was in drydock?

A. Yes, sir.

Q. Were you paid your usual salary?

A. Yes, sir.

Q. And did you sail on the S. S. "Yaka" when it came out of drydock on the next voyage?

A. No; I did not. I was asked by the first assistant if I wanted to make another trip and I said no, it was too long.

Q. You voluntarily left that boat?

A. Yes, sir.

Q. After having been asked by the officials if you wanted to sail again?

A. Yes, sir.

Q. I will ask you if the whole crew worked on the S. S. "Yaka" while she was in drydock?

A. Yes, sir; they did.

Mr. BELL. That is all.

Examiner by TRIAL EXAMINER:

Q. How much did you make during the three and a half days you worked on the shore gang?

A. I got forty cents an hour working eight hours a day;
452 sixteen dollars, I think.

Q. You say you worked three and a half days?

A. Yes, sir; three and a half days.

Q. And you got forty cents an hour?

A. Yes, sir.

Q. And worked eight hours each day?

A. Eight hours a day; yes, sir.

Trial Examiner SEAGLE. We will recess for five minutes.

(At 11:15 a. m. a recess was taken to 11:25 a. m.)

Mr. LUSTIG. May I at this time ask the government to issue subpoenaes for two of my witness, so I may have them on hand later when I present the evidence on behalf of the N. M. U.—Claude J. McLean, of 309 South Broad Street, Mobile——

Trial Examiner SEAGLE. Well, applications for subpoenaes must be made in writing stating the reason for requesting them.

Cross examination by Mr. MCCORVEY.

Q. Mr. Stewart as a matter of fact, I believe you said there were three or four men on the "Fairland" that did not join the N. M. U. and remained members of the I. S. U. That is correct, isn't it?

A. That is correct.

Q. And when the boat went on drydock they were let out with the N. M. U. men?

A. They quit.

453 Q. The I. S. U. men and the N. M. U. men all left the ship?

A. The I. S. U. men stated they were quitting before the ship ever got to Mobile. They said it was their last run.

Q. And they left the vessel at the same time the N. M. U. men did?

A. No; they left the vessel right after they paid off.

Q. And the N. M. U. men stayed there how long?

A. Myself, I slept there every night she was in drydock, I stayed aboard the ship.

Q. Was there any work around there for you to do?

A. There was, but the engineer told me they were shutting off steam at midnight.

Q. Now, you, of course, knew that the Waterman Steamship Corporation had a contract, under the terms of which they had to give preference to the I. S. U. men?

A. No; I didn't know about any contract, except that they had some agreement.

Q. They had an agreement but not a contract?

A. Yes, sir.

Q. And you were a member of the I. S. U. at the time you came to your employment with the Waterman Steamship Corporation?

A. Sir?

Q. You were a member of the I. S. U. at the time you came to your employment with the Waterman Steamship Corporation?

A. Yes, sir.

454 Trial Examiner SEAGLE. What is the distinction that you draw between an agreement and a contract?

The WITNESS. Well, a contract, to my thinking, would be a contract drawn in the presence of, say, Waterman officers and some I. S. U. officers at the time, with the backing of the I. S. U. memberships voting on it, if they wanted this contract or not, making it legal by having some lawyers in front of a judge, or something.

Q. Did you have a copy of the contract in your possession or not, or did you ever see one?

A. I had a copy of the agreement.

Q. The green paper?

A. I had a copy of that agreement.

Q. And did you read it?

A. Yes, sir.

Q. You knew it provided in there that preference in employment must be given to I. S. U. members?

A. No, sir.

Q. You are not familiar with the clause that stated it is understood and agreed that as vacancies occur members of the International Seamen's Union shall be given preference; you did not know it was in there?

A. I knew that was in there, but I knew also they had stated that the man in his rights, and an American citizen, I think,
455 did not have to join any organization; he could be an N. M. U. member or an I. S. U. member, or not belong to any union at all, and still work for Mr. Waterman.

Q. And you did not know it had a clause in there that provided that preference must be given to I. S. U. men?

A. I read that——

Mr. Lustig. I object to that question. It has been answered already.

Mr. McCorvey. I did not understand that he said——

Trial Examiner Seagle. Suppose you read his answer, Mr. Reporter.

(Answer read.)

Q. You stated, in answer to Mr. Bell's question, that you thought you would be in a better position by joining the N. M. U. Now, what sort of position did you refer to?

A. Working conditions.

Q. The kind of people that you got employment by did not enter into it?

A. No.

Q. And you were under the impression that if you joined the N. M. U. you could still be employed by the Waterman Steamship Corporation notwithstanding their contract with the I. S. U.?

A. Yes, sir.

Q. And it was not until you got back to the port of Mobile that you knew, under the contract between Waterman and the I. S. U. they could not employ N. M. U. men?

456 Mr. Bell. I object.

Trial Examiner Seagle. The objection is sustained.

Mr. McCorvey. We except.

Q. Now, the work that the Waterman Steamship Corporation gave you after you came off the "Fairland" was what you would call—you were working out of the shop then, were you not?

A. I was.

Q. And they did let you work there out of the shop for several days, even though you had joined the N. M. U., is that right?

A. I was working out of the shop under the supervision of the First Assistant Engineer on board the ship.

Q. And Mr. Ingram explained that they could not employ you on any other boat as long as you were a member of the N. M. U., didn't he? I believe Mr. Ingram was the man, wasn't he?

A. Mr. Ingram told me I could not sail on any Waterman Steamship as long as I was an N. M. U. man.

Q. And did he tell you at that time that they had a contract?

A. He didn't say anything about a contract.

Q. Just said he could not employ you if you belonged to the N. M. U.?

A. That's right.

Q. And many of those fellows working on Waterman boats now, aren't they former members of the "Fairland," I believe about half of them are working for the Waterman Steamship Corporation now?

457 A. Because they couldn't go to work for Mr. Waterman no way except by going back in the I. S. U. or the I. L. A., changing their union.

Q. And when they got to where Mr. Waterman could give them employment, he gave them employment, didn't he?

A. That's right.

Mr. McCORVEY. That's all, I think.

By Mr. HOWARD:

Q. Mr. Stewart, how long have you been following the sea?

A. I have followed the sea since January of 1936.

Q. Is it customary for a seaman to make shipping articles when he goes foreign?

A. I don't get that?

Q. You generally sign shipping articles when you go foreign?

A. It is customary.

Q. And when you come back to port you have a right to leave the ship, haven't you?

A. It is my right to quit in any American port.

Q. Whenever you get paid off you have a perfect right to leave the ship?

A. Yes; whenever I get paid off.

Q. Now, you joined the International Seamen's Union, did you not, while you were a seaman, and before you went on the "Fairland"?

458 A. I joined the International Seamen's Union with the intention of going to sea for a living.

Q. Now, as a member of that union, you went to the hall of the International Seamen's Union in Mobile, and it was through that union that you were employed on the "Fairland"?

A. I was employed out of the union.

Q. Out of the union hall?

A. That's right.

Q. Now, while you were out on that voyage you abandoned the International Seamen's Union and joined the National Maritime Union?

A. Yes.

Q. And you thought that that would better your condition as a seaman?

A. Yes. sir.

Q. And give you a better chance to ship out of the port of Mobile?

A. Not in my condition as a seaman, but the conditions that I had to work under.

Q. You joined that for your own benefit?

A. That is right; yes, sir.

Q. Now, do you know of any custom at sea, or have you ever heard of any such custom at sea, that when a man joins a vessel and is a member of a crew of one union hall, and abandons that union, that he has got the preference, when he comes back to
459 port, when he has joined another sailor's union to get a job on that ship?

Mr. Bell. I object to that.

Trial Examiner Seagle. The objection is overruled.

A. I have heard of different cases where men have gone on a ship as I. S. U. members, and when the ship came back to that port and they were paid off in the home port they were N. M. U. members, or did not belong to any organization whatsoever, and were still employed, in the employ of the company, to make another trip.

Q. What company have you heard that happen in connection with?

A. That happened in the Sinclair Oil Company.

Q. Do you know whether they had a contract with the International Seamen's Union?

A. I don't know if they did, if they had a contract or an agreement.

Q. Have you ever heard of any other case, in your life, during the time that you followed the sea, involving any such custom as that you talked about here, where a man got his job because he belonged to one union, and then on his voyage, during the course of the voyage, he quit the union, and then had a preference, when he came back, although he was a member of a different union, when the ship that he sailed with was under contract?

Mr. Lustig. I will object to that question.

460 Mr. Bell. I think he has answered that question, Mr. Examiner.

Trial Examiner Seagle. I think he has answered that question already.

Mr. Howard. That is all.

Trial Examiner Seagle. Is there any redirect examination?

Mr. Bell. No, sir; that is all.

Trial Examiner Seagle. The witness is excused.

Mr. Howard. Mr. Examiner, may I ask him one more question? (Addressing the witness.) Will you take the chair a minute, please? I overlooked one question I want to ask you.

Trial Examiner Seagle. Very well.

By Mr. Howard:

Q. Were you in conference with the fellow members on your ship at the time they decided to go over to the N. M. U.?

A. May I—meaning I——

Q. Did you do it all by yourself or did you do it in a concerted agreement with the other members of the crew?

Mr. Bell. I object to the question, Mr. Examiner. I don't think the witness testified that there was any conference, or that there is any evidence whatsoever that there was a conversation.

461 Trial Examiner Seagle. The objection is overruled.

The WITNESS. We held—it was not a meeting, it was the members coming up and asking me when they saw me read this Pilot, they asked to read it and they said, "What do you think of this I. S. U. and the N. M. U. ——"

Trial Examiner SEAGLE. The question can be answered yes or not. Did you have a meeting?

In other words, did you just decide by yourself to go into the N. M. U. or did you confer with other members of the crew and come to an agreement with them that you would all come into it?

A. We conferred into an agreement that we would all go into it.

Q. May I ask you this, Mr. Stewart, if at the time you all decided to go into this N. M. U., you at the time understood that there was no longer any International Seamen's Union at Mobile?

Mr. LUSTIG. I object to that question as incompetent, irrelevant, and immaterial, and not within the issues.

Trial Examiner SEAGLE. The objection is sustained.

Mr. LUSTIG. May I ask him some questions, Mr. Examiner, since the government has waived its right to redirect examination?

Mr. HOSKINS. Mr. Lustig may ask questions on redirect for the government.

Trial Examiner SEAGLE. Very well.

462 Redirect examination by Mr. LUSTIG:

Q. Mr. Stewart, in your work as a seaman, have you ever come in contact with any crews that were employed on board vessels that were laid up in drydock?

A. Yes, sir; I was aboard one.

Q. You have already testified as to that?

A. Yes, sir.

Q. And in your conversation with those crews, and in your knowledge, and within the scope of the knowledge that you have gained as a seaman, are the crews on such vessels usually kept on board such vessels during the time they are laid up in drydock?

A. Yes, sir.

Q. And for what purposes are they kept on board?

A. They are kept on to help repair the ship and do their own work.

Q. And in doing that work they are still regarded as the crews of that vessel, and in the employ of the company owning or operating that vessel?

A. Yes, sir.

Q. And how many crews would you say that you knew of personally were kept aboard the vessels in drydock?

A. The crew of the S. S. "Dora."

Q. Owned by what company?

A. That is a molasses tanker, I forgot what company.

463 Q. Not owned by the Waterman Steamship Corporation?

A. No; they were all kept on and worked in drydock. That was in Mobile, I believe, in August of this year, and when the boat went back on the voyage, why, they all went back too, although

they worked in drydock as members on the crew and all made the trip.

Q. Your experience—in your experience have you ever heard of a crew of unlicensed personnel on any vessel that went into drydock, that was discharged completely, in toto?

A. No, sir.

Q. Before going into drydock?

A. No, sir.

Trial Examiner SEAGLE. How long was that ship in drydock that you mentioned a while ago?

The WITNESS. The "Dora"?

Trial Examiner SEAGLE. Yes.

The WITNESS. That I don't know, but it was over a week.

Mr. LUSTIG. That is all.

Trial Examiner SEAGLE. Are there any further questions?

(No response.)

Trial Examiner SEAGLE. The witness is excused.

Mr. LUSTIG. These next witnesses are called on behalf of the N. M. U., the National Maritime Union.

Trial Examiner SEAGLE. But they are being called as part of the Board's case?

464 Mr. HOSKINS. Yes, sir.

Trial Examiner SEAGLE. And you will conduct the examination for the Board?

Mr. LUSTIG. Yes.

CLARENCE REESE, a witness called by and on behalf of the Petitioning Union, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. LUSTIG:

Q. Where do you reside, Mr. Reese?

A. 758 Charles Street, Mobile.

Q. How long have you been going to sea, Mr. Reese?

A. Since 1924.

Q. Since 1924 you have been going continuously to sea?

A. No; not continuously, but practically all the year round.

Q. You have had no other occupation?

A. No, sir.

Q. How long have you worked in Waterman's?

A. My first trip with them, my first trip was with them, and I have been with them on and off since then.

Trial Examiner SEAGLE. Well, how long is that? When did you first start?

The WITNESS. 1924, May 1st, I shipped out with the Waterman Corporation.

465 Trial Examiner SEAGLE. And you have worked continuously for them?

The WITNESS. No, sir; off and on; I have been with other companies outside of them.

Q. As a seaman you sailed from various ports of the United States?

A. Yes, sir.

Q. Will you mention some of them?

A. I sailed from New York, from Mobile, from San Pedro, from San Francisco, and Warners, New Jersey.

Q. Will you mention some of the steamship companies that you have worked for?

A. The Waterman Corporation, the Cities Service Corporation, Swaine & Hoyt, and American-Hawaiian Lines.

Q. And in sailing on those ships you have made both coastwise voyages and voyages across the sea to foreign countries?

A. Yes, sir.

Q. During those thirteen years of experience as a seaman have you ever worked on board a ship that went into drydock?

A. Yes, sir.

Q. Can you mention some of the ships?

A. I was on the Cities Service "Toledo" in drydock in Mobile, and the "Topa-Topa."

Q. Now, the "Topa-Topa" is owned by the Waterman Steamship Corporation, is it not?

466 A. Yes, sir.

Q. When did you first sail on the "Topa-Topa"?

A. I don't know exactly; I was on it four trips.

Q. And what voyage did the "Topa-Topa" engage in just before it went into drydock?

A. It was the last voyage around April 30th.

Q. And at that time you came back on the "Topa-Topa" as a member of its crew?

A. Yes, sir.

Q. Into Mobile?

A. Yes, sir.

Q. And the "Topa-Topa" then went into drydock at Mobile?

A. Yes, sir

Q. How long did it remain in drydock?

A. Six or seven days.

Q. How many of the crew were there on board the "Topa-Topa" hen it sailed and came back to Mobile; how many of the crew emained on board the "Topa-Topa" as it went into drydock?

A. Well, there was only two men left of their own accord. The hole crew stayed on.

Q. How many were there?

A. That was two that got off. There was around thirty-eight forty-two men. I don't know exactly how many, on the ship.

Q. What work did the crew engage in at that time?

7 A. In general work.

Q. By "general work" you mean what?

A. Well, the work they do at sea, cleaning up and keeping the ship clean.

Q. Can you tell us why it is necessary to keep the crew on board a boat that comes into drydock for repairs? Why it is necessary for the company, the steamship company, to keep on board the full crew, or a large part of the crew, for work, when the company puts their boats into drydock?

A. Well, as a general rule, if their work is satisfactory, they stay on board and make the following trip. The officers, as a general rule, when they have men that know their work, they don't like to get rid of them. That is my estimation of it.

Q. What work, specifically, does the crew perform on board ships when they are in drydock?

A. Well, they help the engineer in what repair work the drydock is not doing, what they do their own self, just like they do when they lay up alongside of a dock loafing.

Q. Now, in your thirteen years of experience as a seaman, is it your experience that the crew is always retained during the period in which the boat is either drydocked or tied up at docks for repairs?

A. Yes, sir.

Q. Now, if they are not retained for work, they are told to
468 stand by, are they not?

A. Yes, sir.

Q. And by standing by, you mean——

A. Well, they are not fired. At the end of the trip, when they pay off for the trip, you get a certificate of discharge, and that means the end of that voyage, and when the ship is ready to go out again, if you want to go back yourself, and you are not fired, you do not put your name on the ship's list in the union hall, and the company is supposed to let you know when the ship is ready to go, and you are reemployed.

Q. Now, in all the years that you have been at sea, have you ever heard of, or known, of your own knowledge, of a case in which a ship has put into drydock, or tied up at the dock for repairs, on which the entire crew is dismissed or let go by the company?

A. Well, when they are going to be laid up indefinitely, as a general rule, they keep what they call a skeleton crew, that is about one half of the crew.

Q. When you say "laid up indefinitely," what do you mean by that?

A. As a general rule that is from two to three months.

Q. And if it is less than two months, it would be considered not being laid up indefinitely?

A. Yes, sir.

Q. About how many boats of the Waterman Lines have you
469 sailed on?

A. Quite a few.

Q. Pardon?

A. Quite a few.

Q. If I were to ask you how many years, to make a rough estimate of the number of years that you sailed on the Waterman ships, could you do that? By that I mean, if you were to add up the total number of months of service?

A. A little over five years, consecutive years.

Q. If you were to add them up they would make a total of a little over five years?

A. Yes, sir.

Q. And during that time the Waterman company, the Waterman Steamship Corporation, has followed the usual customs of all steamship corporations with reference to hiring and firing its seamen?

A. Yes.

Q. And what is that custom?

A. Well, when they are laid off, if they are still around and have not gone out, that is when they are laid up indefinitely, if they have not gone out into some other work, they are called back to the ship.

Q. Suppose you come in from a voyage in which you have signed articles, and you sign off before the Shipping Commissioner,
470 and you receive your discharge, under those circumstances, does a seaman regard himself, regard his employment terminated with the steamship corporation?

A. No, sir; the officer over you tells you.

Q. He also feels, though, that he has the privilege of taking other employment if he so chooses?

Mr. HOWARD. Mr. Examiner, is it objectionable if counsel leads the witness? In the Courts of law it is not permissible, for counsel to testify, but to let his witness testify. All the questions asked are purely leading questions.

Trial Examiner SEAGLE. The objection is overruled.

Mr. LUSTIG. Will you read that question, Mr. Reporter?

(Question read.)

The WITNESS. If the man does not want to go back to sea on the same ship, he can take other employment, or put his name on the shipping list, and sail on another ship, if he wishes.

Q. And if he does not do that does the company usually reemploy him when he comes back?

A. Yes, sir.

Q. And he regards his position or his employment with the company may be just temporarily suspended, but he has a right to his job should he so desire?

A. That has always been the custom, yes, sir.

Q. Now, would you say that the union, or any seaman—under what circumstances would you say any of the seamen's
471 union, or any seaman, would regard a vacancy to have occurred aboard a boat, a vacancy among the crew to have occurred?

A. When one of the ship's officials calls the Union Hall for another man.

Q. And when would that occur, when would he call?

A. When the man is fired.

Q. Or?

A. Or he does not—he quits of his own accord; yes, sir.

Cross examination by Mr. McCORVEY:

Q. Mr. Reese, as I understand your testimony, then, a seaman is not obligated to go out on a new voyage unless he wants to?

A. That's right.

Q. But the steamship company is obligated to take him, it is a one-sided affair?

A. Not necessarily; no, sir; if they don't fire him.

Q. Is there any obligation on the part of the steamship company, as you understand it, to give him preference to go on a new voyage?

A. No obligation; no, sir.

Q. In other words, if he signs off on the old boat and there is a new contract entered into——

Trial Examiner SEAGLE. May I say, to save time, I don't think anybody questions that. I think counsel for the Board is willing
472 to stipulate that a man may quit at the end of a voyage if he so desires.

Mr. McCORVEY. That is not my question.

Trial Examiner SEAGLE. Isn't that what you are attempting to show, that a member of a crew is entitled to quit after a voyage?

Mr. McCORVEY. He claims the steamship company is obligated to hire him, but he has the right to go to other employment.

Mr. HOSKINS. There is no dispute on that.

Mr. McCORVEY. In other words, the contention made by the government is that the steamship company is obligated to hire the man.

Mr. HOSKINS. Just a minute; I did not say the steamship company is obligated to hire the man. My position is, and it always has been, that the man has employment, it is a condition of employment. That is my position.

Trial Examiner SEAGLE. However, you do contend, nevertheless, that a member of the crew may quit his employment at the end of any voyage?

Mr. McCORVEY. But with the steamship company it is continuous employment, they cannot quit him.

Mr. HOSKINS. No; there is no contention like that. The contention is that there is a continuity of employment; that the seaman may resign when his articles have expired. I do not deny the fact
473 that the company may discharge the man for cause, just as the seaman may resign for cause. Of course, I insist entirely that the company may not discharge a man because of his union activities.

Mr. McCORVEY. Suppose there is no cause?

Mr. HOSKINS. Oh, an arbitrary discharge?

Mr. McCORVEY. Your contention is that the company is not obligated?

Mr. HOSKINS. My contention is that there is a continuity of employment without a written contract, just as in the case of any employer or employee without a written contract. Either party may discontinue that contract at any time.

The Waterman Steamship Corporation may dismiss the man at any time it pleases, and the man may resign at any time he pleases.

Mr. MCCORVEY. Your contention is at the end of the voyage, when he gets back in and is discharged and released, that he does not terminate his employment?

Mr. HOSKINS. Yes.

Q. Mr. Reese, is that your understanding, that when the ship goes out and comes back and you are discharged and released, that your employment is not over?

A. Unless you are so notified.

Q. How about it if you are notified?

A. You are fired.

474 Q. In other words, your contention is that if you sign on for a round trip voyage from Mobile to Antwerp and return, and you get back to Mobile and sign off before the United States Shipping Commissioner, and you are discharged and released, it is your contention that you are still in the employ of the steamship company?

A. Still a member of the crew of that ship, unless you are so told.

Q. Now, during the thirteen years, Mr. Reese, that you have been working for various steamship companies, I will ask you this: Have you ever known of any reputable steamship company that you worked for that made it a practice of breaking contracts which it had entered into with unions to furnish them members of a crew?

Mr. LUSTIG. I object to that.

(Discussion off the record.)

Mr. LUSTIG. I will withdraw the objection.

A. I really cannot answer that.

Q. You knew, of course, that the Waterman Steamship Corporation did have a contract with the International Seamen's Union to use their men?

A. They had an agreement, but—they had an agreement to use the I. S. U., yes.

Q. In fact, you got your employment when you were in the I. S. U.?

475 Trial Examiner SEAGLE. Just a moment. Is this witness one of the discharged employees?

Mr. HOSKINS. This witness is not named in the complaint; no, sir.

Trial Examiner SEAGLE. Then, I don't think that examination is necessary.

Q. So, your contention is, when you are called back on the ship to go out on another voyage, that that is no new employment?

A. That is the same as old employment; yes.

Redirect examination by Mr. LUSTIG:

Q. At the end of the voyage, when you come before the Shipping Commissioner and sign off and receive what is technically known as a discharge, do seamen as a rule, that is, is it the custom of seamen to regard such discharge as termination of their tenure or term of employment with the company?

A. No; it is just termination of the voyage.

Q. And even thought they cannot or may not receive any further pay, but stand by idly, they still regard themselves in the employ of the corporation or the company that owns or operates the boat?

A. Yes, sir.

Recross examination by Mr. HOWARD:

476 Q. Mr. Reese, suppose, as you said a while ago, you got a position on a ship because you were a member of the International Seamen's Union and went out on one voyage under the ship's articles, and while you were away you abandoned the union through which you got that employment and joined another union, and suppose that the Waterman Steamship Corporation that operated the ship had a contract with the International Seamen's Union and you benefited by that contract by getting your job on the ship; now, if you abandoned that union at another port during that voyage, and came back to the port of Mobile, do you still regard yourself, as a member of the National Maritime Union, still employed on that ship, and having a preference of employment?

Mr. LUSTIG. I object to that question as not within the scope of cross-examination. Nothing brought out by me has in any way opened the door for this type of cross-examination, and it is not relevant. I merely put Mr. Reese on to prove custom.

Trial Examiner SEAGLE. Are you attempting, Mr. Howard, to establish a custom of a certain character? Do you realize that this witness is not one of the crew of either the "Bienville" or the "Fairland"? He is merely testifying as to general customs in the shipping industry.

Mr. HOWARD. As I understood his testimony on direct examination, he said that although he signed articles on a
477 ship and went out to perform that contract, and came back and was paid off and discharged, he was still a member of the crew. Now, I want to ask him if, when he got that position on the ship as a member of the International Seamen's Union——

Trial Examiner SEAGLE. You are asking a hypothetical question, then?

Mr. HOWARD. Yes. He undertook to prove by him what the custom was, and now I am asking him with respect to that custom, and after the man has testified on direct examination——

Trial Examiner SEAGLE. The objection is overruled.

Mr. LUSTIG. Mr. Trial Examiner, if you please. If Judge Howard wants to make Mr. Reese his witness, I have no objection, but, on

cross-examination, I believe he should be kept within the scope of cross-examining on those issues raised by me.

Trial Examiner SEAGLE. The objection is overruled.

Mr. LUSTIG. I take an exception.

(Question read.)

Trial Examiner SEAGLE. After hearing the question reread, it seems to me that your hypothetical question does not relate to the question you are asking him about, whether he would regard himself as being employed. Now, that question is decidedly irrelevant.

Mr. HOWARD. May I strike out that question and put it
478 this way?

Trial Examiner SEAGLE. Yes.

Q. As I understood it, you stated that you regarded it as the custom of the sea, that when you went out on duty on a ship, and came back from a foreign voyage, and fulfilled your articles or contract, and you were discharged by the Shipping Commissioner, and were paid off, that that did not terminate your employment. Now, I am going to ask you what is the custom if you go out in this situation: A seaman belongs to a union and that union has a contract with the owner of the ship which he sails, and he gets his job through the union hall of that union, and he goes out to sea on the vessel to a foreign port, on a foreign voyage, and while he is on that voyage he joins another union with which his owner has no contract whatever. When he comes back, when he finishes that voyage and comes back to port, and is paid off and discharged, is there any custom of the sea that you know of that would require that owner to break his contract and still keep him on as an employee?

Mr. LUSTIG. I object to that question as calling for a conclusion of law.

Trial Examiner SEAGLE. I think that the question is improper in the form in which you put it, and the objection is sustained.

Mr. HOWARD. May I have an exception?

479 Trial Examiner SEAGLE. You will have an exception. Are there any further questions?

Mr. HOWARD. No, sir.

Trial Examiner SEAGLE. The witness is excused.

W. S. LOWRY, a witness called by and on behalf of the Petitioning Union, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. LUSTIG:

Q. Where do you live, Mr. Lowry?

A. I live at Whistle, Alabama.

Q. And what is your occupation?

A. I am working in a shipyard now at the present time, at the Alabama Dry-dock and Ship Building Company.

Q. And you are here pursuant to a subpoena served on you?

A. Yes, sir.

Q. Did you ever work on the sea?

A. I was on the sea for approximately thirteen months.

Q. And in what capacity did you work?

A. I was the fireman.

Q. Will you name some of the lines for which you worked?

A. I worked for the Waterman Steamship Corporation and Isthmian Steamship Line. On the Waterman Steamship Corporation I was on the "Topa-Topa" for three trips and for the Isthmian
480 Steamship Line I sailed the "Ranger" three trips, or five trips.

Q. On the "Topa-Topa" you worked as a fireman for the Waterman Lines?

A. Yes, sir.

Q. Were you on board the "Topa-Topa" when it went into dry-dock on November 1st?

A. I was on the "Topa-Topa" when it went into dry-dock, but I went to work on the "Topa-Topa" while she was laying at the State Docks undergoing repairs.

Q. In other words, she was tied up at the dock undergoing repairs?

A. Yes, sir; that's right.

Q. And how long was she tied at the docks undergoing repairs at that time?

A. Well, she came in in the first part of November and she left our just a few days before Thanksgiving, going around the coast and picking up cargo, and she sailed from Mobile on the day after Thanksgiving. I don't remember the date, but I think it was—I signed on on the 24th of November 1932.

Q. You signed on as a fireman?

A. Yes, sir.

Q. Previous to that, what work were you doing on board?

A. As part of the crew.

Q. Now, during the entire time that the "Topa-Topa" was
481 tied up alongside of the dock for repairs, was the rest of the crew on board the ship working?

A. Approximately all of them. A few of them had been allowed to go home while the ship was undergoing repairs, but they came back when she started the voyage to pick up cargo.

Q. Did you work on any other boat that was tied up?

A. I was on the "Topa-Topa" again, let's see, I will tell you the date I was on her, the last trip, the next to the last trip I made on it, and then she went in the Alabama Drydock for sixty days, approximately, and she left Mobile. I signed on 1-25 and was paid off on 3-25.

Q. Twenty-five, you mean the 25th day?

A. 1-25-33, and was paid off or discharged on 3-25-33, and she went into dry-dock the latter part of March; they retubed the boilers; 2,650 tubes went into the boiler.

Q. What other work was done?

A. Well, there was some other work done, but I did not stay the length of time she was in dry-dock, I was called to New York as a

witness in a case and I left there about five days after she went into dry-dock.

Q. And when you returned, how much later did you return?

A. I returned in June, and went to work when they were reconditioning the "Fairland" into a passenger ship, or they put some
482 passenger quarters on at the M. & O. Pier, just outside of the grain elevator, and I worked there until the "Topa-Topa" came up to Pensacola, and I got aboard at Pensacola and got my job when I got back to Mobile.

Q. When you went on board at Pensacola, on the "Topa-Topa," was the same crew on board the vessel, or practically the same crew on board the vessel, as at the time you left it in drydock?

A. Approximately.

Q. And do you know how long, from your conversation with the crew that you recognized as being the same crew on board the "Topa-Topa," when she was in drydock, do you know how long the "Topa-Topa" was in drydock at that time?

A. Approximately sixty days.

Q. And from the time she went into drydock—you were with the "Topa-Topa" for five days after she went into drydock?

A. Approximately; yes, sir.

Q. And during those five days, about how many, or what proportion of the crew, would you say, remained on board the "Topa-Topa?"

A. Well, the whole engine department remained, I know.

Q. Any other departments remain?

A. Well, I am not positive, but I think a few of the deck crew was assigned down to the engine room to pull a bunch of boiler
483 tubes and fire brick, and stuff like that, that they could get handled cheaper by the ship's crew than they could by the shipyard men.

Q. And when you rejoined the vessel many months later, or several months later, you found the same crew?

A. Yes, sir.

Q. And did you talk to some members of the crew?

A. Yes; naturally, in two months' time you can talk about anything.

Q. And did they tell you they remained on board the ship?

A. Some of them said they worked right straight on through.

Q. And you say you work now in the drydocks of the Alabama Dry-Dock Company?

A. Yes, sir; I have been there for the past eight months, regular.

Q. In the last eight months, about how many Waterman boats would you say put into drydock?

A. Well, that is a statement there that you can make one way, and I don't know whether you are right or not. They come in and they go out. I worked on the "Topa-Topa" when she was up in the dry-dock of the Alabama Dry-Dock Company and I took particular interest in that boat, and I knew the chief engineer, because I sailed with

him three trips, and he was first assistant one trip and chief two trips, and the crew was all on it, and I was working for the drydock company and I went aboard, went on up to the top to see
484 some of the old bunch who were still on her, and they kept the crew on her, and I was also on the "Gateway City," when she was undergoing an insurance job, and I worked three days on her and they kept the crew by with her, and various other ships that came in there for short lengths of time, and they always kept the crew by.

Q. Which ships do you remember, belonging to the Waterman Steamship Corporation, do you remember seeing there during these last eight months, being in drydock down here?

A. I will tell you about that. The Alabama Dry-Dock is divided into two yards, the upper yard and the lower yard. Now, when you get on a ship down at the Alabama Dry-Dock Company, you can see the "M. O. L." on the stack at the lower yard, when you are across the river working at the upper yard, and you don't know what boat it is on, what boat it is in, and there has been several of them, and two boats that I have worked on of the Waterman Steamship Corporation in the Alabama Yard, and they maintained their crew while in drydock.

Q. During the last eight months, did you ever see the S. S. "Afoundria" in drydock?

A. Well, I wouldn't say specifically.

Q. If you don't remember just say so.

A. I don't remember.

Q. Or the "Antinous"?

485 A. I am not positive, but I think I worked on the "Antinous." I wouldn't say for sure.

Q. The "Arizpa"?

A. I would not say for sure, only the ones I know.

Q. Only the ones you are sure of, Mr. Witness. The "Azalea City"?

A. I did not work on that. I wouldn't say positive.

Q. The "Bellingham"?

A. I wouldn't say.

Q. The "Bienville"?

A. I wouldn't say that.

Q. The "City of Alma"?

A. I don't remember. I remember her being in dry-dock, but whether I saw her, whether it is in the last eight months or not, I wouldn't say.

Q. All right, I will modify the question. Do you remember, while being employed down here at the dry-dock, seeing any of the vessels I have mentioned in dry-dock?

A. Yes, sir.

Q. Now, going back. Did you ever see the "Afoundria" in dry-dock?

A. I have seen the "Afoundria." I worked on the "Afoundria" in dry-dock, but I wouldn't say it is in the past eight months.

Q. I have changed my question now, Mr. Witness, to ask if
486 while you were employed down in the dry-docks, no matter when, throughout your employment, whether you have ever seen these vessels in dry-dock, and I will read to you the names of the vessels, that are owned by the Waterman Steamship Corporation. Now, I will go over it again. The "Afoundria"?

A. I have seen her in dry-dock.

Q. Was her crew employed on her while she was in dry-dock?

A. I will make a statement there to clear myself up. I have worked at the Alabama Dry-Docks since June of 1926. Now, you can ask me questions.

Q. Since June 1926, have you ever found the "Afoundria," the S. S. "Afoundria," in dry-dock?

A. Yes.

Q. And refreshing your recollection, or recalling as best you can, was the crew on the vessel, or just part of the crew on the vessel, on board the ship while she was in drydock? If you don't remember, say so.

A. Well, I could answer that question if you state it in another way.

Q. Answer it anyway you choose.

A. I will say I don't remember that——

Trial Examiner SEAGLE. Which way do you want to state the question?

The WITNESS. If he asks me what ships I have seen in dry-dock without a crew I could answer it better.

487 Q. All right, answer that question.

A. The only ships I have seen come into dry-dock not having a crew on them is those which came out of the laid up fleet, or had been laid up for an indefinite length of time, and they generally took a crew while in dry-dock.

Q. And when you say laid up, you mean laid up in the bone yard, is it?

A. I will say laid up for an indefinite period.

Q. Will you explain to the Trial Examiner what is meant by laid up for an indefinite period?

A. Well, it was a ship like two or three years ago, the Waterman Steamship had five or six tied up in the river at times, because of lack of cargo for them, and those ships, if they went into dry-dock, or up the river, they got laid up and they kept part of the crew, and they laid part off, they kept maybe one or two men aboard, I mean maybe one or two A. B.'s, and at no time did I see any laid up that did not have a crew.

Q. In other words, any ship coming out of active service, and coming into dry-dock, would have its crew aboard, or a larger part of its crew?

A. Part of the crew.

Q. When you say part of the crew, what part of the crew would you say? I assume it varies.

A. If it is just coming into dry-dock, the crew generally
488 brings it into dry-dock. We have boats coming in from twenty-five up to thirty days and work on them, and the crew works in there, and they may want to lay off part of the crew, or work a major part, or maybe they will be discharged, but those that want to go back, their jobs is open if they wish them.

Q. During the time that you worked down below in the dry-dock did the "Antinous" come in?

A. The "Antinous" has been in when I have been working in the shipyard. I was working the day she was there.

Q. Did the "Arizpa" ever put into dry-dock?

A. Yes, sir.

Q. The "Azalea City"?

A. The "Azalea City" and two or three others are new ships, and if they have been in there, they have been around there just lately. I don't remember the new ones. The old ships of the company, I have practically been on every one of them when they were in dry-dock.

Q. In other words, you say you have been on most of the ships owned by this company, and there are twenty-one vessels owned by the Waterman Steamship Corporation. About how many of them would you say you went on, or that you had been on?

A. I could easily say I have been on half of them.

Q. While they were in dry-dock?

A. Yes, sir.

489 Q. Were you ever on them while they were tied up alongside of the dock for repairs?

A. Yes.

Q. How many boats, of your knowledge, does the Waterman Steamship Corporation own or operate, about?

A. Well, are you counting the Pan-Atlantic, all the boats that run down to the islands and the boats that run foreign too?

Q. Just the Waterman Company, leaving out the Pan-Atlantic.

A. Well, that I could not say exactly, but they must own fifteen or sixteen boats, at least that many, going across in foreign trade.

Q. And a number of boats that run coastwise?

A. Yes, the Pan-Atlantic, I believe they call themselves, they have the "Fairport," the "Fairland," and the "Fairisle," running down to the Islands, and maybe another one running down there.

Q. On every occasions that you have noticed boats of the Waterman Steamship Corporation in dry-dock they were boats that had just completed a voyage and come from active service, whether it is foreign or coastwise?

A. Yes, sir, most of them.

Q. They were a part of the crew that originally sailed that boat back to its home port who were on board the vessel when it came into dry-dock, is that true?

A. Now, whether or not that crew sailed her back to the
490 home port I don't know, they were part of the crew that came when they put it on dry-dock, and when they were put on, I don't know.

Q. From your knowledge of crews, what proportion of these vessels, would you say, were manned, when they came into dry-dock, by the original crew that sailed them into the home port? Do you understand my question?

A. Here is the thing about it. As a general rule at sea, when a man's work is efficient, and his character is good, naturally, the engineers or the Mates are going to let him make another trip, unless he just wants to quit for various reasons, and from that standpoint, I would say that most of the crew would be the men that sailed from the home port.

Q. Now, in these years that you have actually worked in the shipyard—how many years did you say you worked in the shipyard?

A. I have been in the Alabama Dry-Dock Company, on and off, for eleven years, but in that time I have worked with the Union Iron Works in San Francisco, and I worked for the Todd-Johnson Dry-Docks in New Orleans and the Todd-Mobile Dry-dock in Mobile.

Q. All of the companies you have mentioned are all dry-docks?

A. Yes, sir.

Q. And they all do repair work on ships?

491 A. Yes, sir.

Q. And during that time, about how many boats would you say you saw in dry-dock?

A. Well, I can make a rough estimate of it.

Q. That is all we are asking.

A. I will say, I have had practically six years experience in a shipyard, actual experience, and in that six years I would say approximately one hundred ships a year would be in dry-dock. It may be overestimated, and it may be underestimating it.

Q. About that many?

A. Approximately six hundred ships in dry-dock.

Q. Now, those ships—did you ever see any vessel come into dry-dock where the ship's crew was discharged in toto, or completely discharged, the entire crew?

A. The S. S. "Volunteer," a Lykes Brothers ship came into the Alabama Dry-Dock in the early part of the summer and laid off her crew for two or three weeks, I am not positive as to the exact date of that; they laid off their crew, and I asked the first engineer on that ship for a job, and he said, "Well, I don't know until she gets ready to sail." He said, "I told the crew that when we left they could come back to work, when we were ready to sail, if they wanted their jobs, and I don't know until we are ready to sail how many will come back."

492 Q. Now, in your experience as a seaman, did you, or seamen similarly situated, who came back from a voyage to a foreign

port, and signed articles and received their discharge from the Shipping Commissioner, regard such discharge as a termination of their term of employment with the company?

A. No, sir.

Q. When does a man regard his term of employment with a steamship company ended?

A. Well, if his work is satisfactory, and the engineers or the mates have no complaint in his work, he regards his job, he regards that he has the job, until the time he takes a notion to quit or they fire him.

Q. And he also has the privilege of leaving?

A. Leaving on the next voyage?

Q. He also has the privilege of leaving the company?

A. Yes, sir.

Q. Now, what is the custom in re-shipment—did you ever hear the term "immediate re-shipment"?

Trial Examiner SEAGLE. There is no such term used in the contract. The term used in the contract is "prompt reshipment."

Q. The term "prompt re-shipment"?

A. What my idea would be of prompt re-shipment——

Trial Examiner SEAGLE. The first question is did you ever hear that term before?

493 The WITNESS. Not in sea life.

Q. The term is not used by seamen?

A. Well, I made one trip around the world, clear across and back, and I never heard it used.

Q. What is the custom with reference to employment that prevails, among all of these lines that you have come in contact with, and among the seamen that you have come in contact with during all the years of your employment along the waterfront?

A. Will you state that question again?

Q. What is the custom, I say, what is the nature of the term of employment? What do seamen regard themselves as to their term of employment with the company, when it is ended and when do the companies regard that seamen have quit their employ? State the circumstances and what the usual custom and manner is among seamen?

A. Well, if a man goes on a trip, goes from Mobile to any foreign port, and if the ship feeds good, and it is a good job, and he likes it, he generally stays with it, if there is no complaint from his engineer, and if you have any complaint with your engineer or superior officer, you generally know it before you get back to port, and you will know whether you are going on another trip or not. There is always, if there is some misunderstanding, there is always a way to know
494 it, if you are going to get off, and if he don't tell you, and there is no reason why you should get off, you make another trip.

Q. In other words, at the termination of that voyage, and at the end of the ship's articles, when you sign off and receive your dis-

harge from the Shipping Commissioner, that is not a termination f your employment with the company?

A. No, sir.

Q. And do or do not seamen regard that as a termination of their mployment?

A. No; they do not look at it as the end of their employment with he company; they do not figure it as the end of their employment as ar as their articles are concerned. The articles is mere protection o the seaman by the United States Government for a certain voyage, nd to a certain port, or your final port of discharge or first loading ort. That is a termination of the articles to the seaman, but not the nd of the employment.

Q. Do or do not companies give preference to men that have just ompleted a voyage, even though the boat may be laid up for a nonth or two?

A. Yes; I will say they do.

Q. Let me put the following question to you, Mr. Witness: Suppose a boat comes in, like the "Fairland," or like the "Bienville," one is put in at the dock for repairs and the other is put into the 195 dry-dock, and you have seen during the past six years in that dry-dock about six hundred boats come in, come in in the same fashion to be repaired, is that correct?

A. Yes.

Q. Assuming a boat comes in and the crew is signed off and they have received their certificates of discharge from the Shipping Commissioner, and they were told the boat would be laid up for a month for repairs, and they were not told that they were discharged for nefficiency or other just cause, would that crew, or would any sailor, who was a member of that crew, regard his employment as terminated ith the company, or would he still regard himself as an employee f the company just to stand by until the vessel's repairs were completed, and then that he had the privilege of rejoining the crew?

A. In most cases where the ship comes in, if the ship comes in for big repair job, where the shipyard is going to do all the work, and e crew is let go, then, in most instances, where I have seen, it is actically that same crew or part of that same crew always comes ck to that boat.

Q. When you say come back, come back when?

A. When the boat was ready to leave the dry-dock, when she was dy to raise steam, in other words, to get under way.

Q. Now, you said something before, that it was cheaper for the companies to keep a crew on board to do ordinary repair work, than it would be to hire the labor in the drydocks. Will you go into that in a little greater detail and just tell us why, in r opinion, it is customary for the companies to retain crews on rd their vessels which tie up, either at the dock for repairs, or are up into the dry-dock for repairs? Why, under those circumces, is it customary for the steamship companies to keep a part

of the crew, or even the entire crew, on board a vessel to make repairs; and will you also state what repairs the crew usually makes?

A. Well, I know that Waterman operates a shop up at Pier C at the State Docks where they do practically all the work above the water line, and most of their work, when I have witnessed them coming into dry-dock, unless it was an insurance company job, like one of the boats, like the "Gateway City," at that time, and that is work, most of the work is below the water line, and that work, they do that at the shipyard, but the other work they do themselves and cut down the profit for the shipyard, and when they have these men working on it in the shipyard, it is going to cost them more than if it is done by themselves, and they have that margin of profit to be shown there somewheres.

Q. In the shipyard they pay for the labor by the hour?

A. Yes.

Q. And they pay the company, the shipyard company, a certain flat rate for skilled workmen?

497 A. Well, now, there is various jobs; there is bid jobs, and some of them time and material, and some put out on public bidding.

Q. Do you know, and if you do know, will you please state, what work can be done aboard a ship, repairs by the ordinary crew, that could also be done by the drydock company?

A. Well, most of the repair work can be done by the engineers because they are supposed to be fully capable of taking care of that equipment and the boilers too.

Q. Let me interrupt you and ask what work can be done by the unlicensed personnel?

A. Well, part of the boiler work—all of the boiler work, cleaning of the boilers, for one thing, stripping the boilers for boiler inspection, and taking down, and such things as boiler gratings that can be put back by machinists, or engineers; the machinist is not licensed, he is not a licensed man. They have men who can do that.

Q. How about painting?

A. Painting, ship's painting, cleaning bilges and tanks.

Q. When the company employs the crew to do that work, what is the rate of pay? Is it the same rate of pay paid to the crew on board the boat while she was at sea?

A. I cannot say what the payment is today. I know when we worked on the "Topa-Topa" our rate was two dollars a day, the same as the oiler got at sea.

498 Q. In other words, if you worked on the "Topa-Topa," as a member of the crew, you got the same rate of pay?

A. We got flat pay of two dollars a day.

Q. And maintenance?

A. No maintenance. We paid for our own meals. The steward fixed them and we paid for them.

Q. Was that——

Trial Examiner SEAGLE. That was not the rate you got at sea?

The WITNESS. The rate at sea was $52.50 for firemen and $60 for oilers and water tenders.

Q. And what would that work be charged for, I mean at what rate would it be charged for in the drydock?

A. I couldn't say. Some of the firemen and some of the oilers had the same places to work, and some had others. Most of the time I was doing boiler work.

Trial Examiner SEAGLE. I don't think hours of pay are material, and I think we are getting far afield.

Mr. LUSTIG. Mr. Examiner, I simply tried to show that it is cheaper for the company to keep the crew on board to do the ordinary work, such as cleaning and so on, painting, rather than——

Trial Examiner SEAGLE. I understand what you are trying to show, and I think the witness has already answered your question.

500 We will recess until two o'clock.

(Whereupon, at 1:00 o'clock p. m., a recess was taken until 2:00 o'clock p. m.)

501 AFTER RECESS

(The hearing was resumed at 2:00 o'clock p. m., pursuant to adjournment.)

Trial Examiner SEAGLE. The hearing will come to order.

W. S. LOWRY resumed the stand, having been previously sworn, was examined and testified further as follows:

Cross examination by Mr. MCCORVEY:

Q. Mr. Lowry, I believe you testified that when the voyage was ended, and the articles were released, or signed, that you did not consider that that was a termination of the employment?

A. I did.

Q. And did you testify as to your understanding of the term "prompt reshipment"?

A. I was not permitted to testify to that.

Q. I believe you said you made a trip around the world, and on trips of that kind, of course, there would be no reshipment?

A. There was reshipment at the end of that voyage.

Q. The end of the voyage?

A. Yes, sir.

Q. Do you know what the expression "prompt reshipment" in maritime circles means, in a maritime contract?

A. I could give you what it means, my definition of it.

502 Q. You say the steamships that went in dry-dock, that you worked on, that they kept a certain amount of the crew on board while in dry-dock?

A. Yes, sir.

Q. They kept them on board when there was work to be done, didn't they?

A. Yes, sir.

Q. And when there wasn't any work to be done by the members of the crew, why, these members of the crew, whose services were not needed while the ship was in dry-dock, were laid off, isn't that correct?

A. To the best of my knowledge, they were.

Q. Now, I believe you said you went on board the "Topa Topa"; did you say that?

A. Yes, sir.

Q. Now, when you went on her, was steam up and was there cooking on board, and were the quarters in order at the time you went on the "Topa Topa"?

A. Steam was up, and she was on atmospheric exhaust, due to the fact that she was in dry-dock and they could not use the condenser.

Q. Now, you said something about the crew always brings the ship into dry-dock. The ship cannot come in by itself, everyone that is taken in is brought in by the crew, isn't it? Don't the crew bring it in?

503 A. Tugs can take it in.

Q. But it is customary for the crew to bring it in?

A. Sometimes.

Q. And when the ship is in dry-dock and there is work to be done, the crew usually stays on board, that is, so much of the crew that is needed?

A. Yes, sir.

Q. Now, when the "Fairland" went into dry-dock, tell us what work there was to be done by the crew on the "Fairland."

A. Did I state in any part of my testimony any part about work that was to be done on the "Fairland"?

Q. I am asking you now.

A. I don't know that.

Q. And so far as you know, there—you don't know whether there was any work to be done or not?

A. I do not.

Q. I believe you were there when the "Fairland" went into dry-dock, were you not?

A. I was in one of the two yards.

Mr. McCorvey. I don't think that there is anything else that I want to ask him.

Trial Examiner Seagle. Any further questions?

Mr. Lustig. No, sir.

Trial Examiner Seagle. The witness is excused.

(Witness excused.)

504 C. J. O'Connor, a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. BELL:

Q. What is your name?

A. Claude J. O'Connor.

Q. Where do you live?

A. 165 Division Street.

Q. And what is your occupation, Mr. O'Connor?

A. Marine engineer.

Q. How long have you been going to sea?

A. Twenty years; fourteen years as engineer.

Q. Name some of the ports that you sailed from or signed articles from.

A. San Francisco, California; Seattle, Washington; Mobile, Alabama; New York and Baltimore.

Q. Name some of the lines that you have sailed with.

A. Dollar Steamship Line, Pacific Mail, Waterman, Mobile-Gulf and Miami, Pan-Atlantic.

Q. Have you ever sailed for Waterman?

A. Yes, sir; since 1929 and until July 15th of this year I sailed for Waterman.

Q. What was the last trip that you made for Waterman?

A. I will have to look it up. According to the articles, I finished up on the 14th day of July 1937, but I worked one extra day for the man that was supposed to relieve me, and he did not show up until the next morning, so he paid me out of his own pocket, Mr. Smith.

Q. What boat was this?

A. S. S. "Azalia City."

Q. Did you sign articles on this ship?

A. Yes, sir; for two voyages.

Q. Where did you go?

A. The first trip we went to England and Germany and the second trip we went to Manchester, London, and Antwerp.

Q. Were passengers and freight carried on this ship?

A. On the second voyage there were, yes, sir; passengers were carried.

Q. And on the return trip were there passengers carried?

A. Yes; I think we had five or six ladies on the return trip.

Q. Mr. O'Connor, the ports from which you sailed, and as you know it, what, if any, is the custom covering preference to be given members of the crew on the ship on which they just sailed when it is ready to start on its next voyage?

A. The crew always is permitted to take another voyage, unless they voluntarily quit or are discharged.

Q. From your experience, and from your knowledge, what is the custom as to whether the crew is retained while the ship is in drydock or tied up for repairs?

A. Well, it all depends. They may keep them on a month, or they may keep them on for a week, and they may discharge them when they first get in there.

Q. Well, when you say "discharge," what do you mean?

A. Lay the crew off temporarily. As a rule they lay the crew off temporarily, and when they do go to lay them off they keep a skeleton crew up that can handle the ship, or they discharge everybody on the ship that they want to.

Q. I will ask you this question: If it is customary, when the ship comes out of drydock, preparatory to going on another voyage, to reemploy the crew that was laid off?

A. Yes, sir; unless they have something against them.

Q. For cause?

A. For cause; yes, sir.

Q. Do you know whether or not these customs have been carried out on Waterman's ships?

A. Yes, sir; the "Bellingham" was laid up here the 26th day of December 1936, and she did not leave Mobile until about the 25th or 26th day of January 1937, to go around the Coast; and the engineers were kept on her, and to the best of my knowledge, the firemen and water tenders and oilers were kept on there. As far as the deck crew is concerned, I don't know.

Q. From your experience, what is the average time that a Waterman ship remains in port?

507 A. In Mobile?

Q. Yes.

A. I would say three days is a good average for the M. O. L. boat and four days a good average for the Pan-Atlantic boats.

Q. That is for the whole time in port?

A. For the whole time in port, from the time she arrives until she departs.

Q. Do you know of your own knowledge, Mr. O'Connor, whether the Waterman Steamship Company has recently purchased additional boats?

A. Well, from what I can see in the newspapers, that is all I have to go by, they have purchased some ships.

Q. You have seen that in the newspapers?

A. I heard of two ships that they purchased in the last two years. I was on them. I was on the "Bellingham" when they took her over from the West Coast crew, and the "Azalia City." I joined her in Gulfport.

Q. Do you know, of your own knowledge, that the Waterman Steamship Company are now operating these vessels?

A. Yes, sir.

Q. Do you know whether or not the Waterman Steamship Corporation is now employing more seamen than they employed, say, three months ago?

A. Well, I don't know. According to the newspaper reports, that I have to go by, they have sold some ships and bought additional ships, and now as to the number of men I cannot
Q. Do you belong to a union?
A. Yes, sir; I belong to the Marine Engineers Beneficial Association, No. 14, Local, Mobile.
Q. When did you join?
A. In 1924. I joined the Marine Engineers Beneficial Association in San Francisco, when I first got my license in 1924.
Q. Are you now in good standing with this union?
A. Yes, sir.
Q. Do you know of your own knowledge if the Waterman Steamship Corporation entered into a contract with the M. E. B. A.?
A. I have never seen a contract, I have seen a little pamphlet put out here with what the agreement was supposed to be, but nobody's signature was on it, it says, "Waterman Steamship Corporation," with no executive's name signed to it, and if they have any contract, I can't say, only what I have been told, and this little pamphlet which I have seen.
Q. Will you say then, that the Waterman Steamship Corporation has entered into an agreement?
A. To the best of my knowledge, from what I have been told and this agreement that I saw; yes, sir.
Q. Are you familiar with this agreement?
A. Only what I seen, that little pamphlet form there.
Q. I mean with any of its provisions?
A. Yes; what provisions are in that book, I am familiar with.
Q. What are some of the provisions in this agreement?
A. Eight hours a day—
Trial Examiner SEAGLE. What is the purpose of this testimony?
Mr. BELL. I am attempting to show, Mr. Examiner, that there is a specific agreement or contract entered into between the Waterman Steamship Corporation and this Union, governing and regulating hours of work, wages, and conditions of employment.
Mr. MCCONVEY. This man never lost his job on account of the M. U.
Trial Examiner SEAGLE. How is that relevant?
Mr. HOSKINS. You are not questioning the fact that the M. E. B. A. affiliated with the N. M. U., are you?
Trial Examiner SEAGLE. Just one moment. The complaint alleges that the services of Mr. O'Connor were terminated because he was a member of a labor organization known as the National Maritime Union of America.
Mr. MCCONVEY. He has testified he is not a member of it.
Trial Examiner SEAGLE. His testimony is he is a member of the Marine Engineers Beneficial Association.
Mr. MCCONVEY. Which has existed since 1924.

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510 Trial Examiner SEAGLE. Is he a member of both organizations?

Mr. HOSKINS. If the respondent desires the Government to put on witnesses to show that the Marine Engineers Beneficial Association is connected with the National Maritime Union, we will be glad to do so.

Mr. MCCORVEY. You are running your own case. We are not telling you what to put on.

Mr. BELL. Our contention is that it is an affiliate of the National Maritime Union. It is affiliated with the National Maritime Union.

Trial Examiner SEAGLE. Yes. However, it is an independent organization, is it not?

Mr. BELL. Yes, sir; it is an independent organization.

Trial Examiner SEAGLE. Very well. Will you proceed?

Mr. HOWARD. May I, Mr. Examiner, object to further examination of the witness as far as the Marine Engineers Beneficial Association is concerned?

Mr. HOSKINS. Mr. Examiner, I don't see where Mr. Howard has any right to present any objection to the testimony of this witness, or with any relation to the Marine Engineers Beneficial Association.

Mr. HOWARD. I do not exactly get the gentleman's reasoning that I was allowed by the Examiner to come in and I must stay out all the time.

511 Trial Examiner SEAGLE. I have not ruled that you must stay out all the time. In fact, you have been in pretty nearly all of the time.

Mr. HOWARD. I just wanted to say that I understood—I may be mistaken—I have read the complaint, and all of the questions so far as I understand, related to the unlicensed personnel on the ships, and I understood it was attempted to be shown by the Government and by the National Maritime Union that all of the wrongs done were done because the men were members of the National Maritime Union, and they have unjustly been discriminated against because they were members, and I understood all of the questions, for example, those relating to the "Bienville" and the "Fairland" dealt with the members of the crew, and there was a special limitation and classification on licensed officers. Now, nobody, as I understand it, can belong to the Marine Engineers Beneficial Association except licensed officers, and if I have any right to object, I want to object to any attempt to bring in the Marine Engineers Beneficial Association.

Trial Examiner SEAGLE. Well, I don't think you have a right to object on that score. The objection is overruled.

Mr. HOWARD. We except.

Trial Examiner SEAGLE. Will you continue?

Q. Mr. O'Connor, is there, from your knowledge of this agreement or contract as you call it, a provision relating to the
512 number of hours seamen shall work while on a ship?

A. Yes, sir; eight hours a day. It is also a law which went into effect December 25, 1936.

Trial Examiner SEAGLE. I want to return now to my original question. Just what is the purpose of this testimony?

Mr. BELL. Mr. Examiner, this witness, it is true, belongs to the Marine Engineers Beneficial Association, which is organized for licensed men.

In our complaint it is charged and alleged that he has been discriminated against due to certain conditions and circumstances, and it is my purpose, in examining this witness, to bring out the circumstances under which he was discharged, and, as a basis of that discrimination, I would like to show the terms and conditions under which the Marine Engineers Beneficial Association had an agreement and contract with the Waterman Lines, governing and regulating employees in his boats.

Trial Examiner SEAGLE. Well, that is not the same contract which has been submitted in evidence.

Mr. BELL. No, sir; this contract has not been admitted in evidence.

Trial Examiner SEAGLE. I know, but the complaint does not allege he was discriminated against because of his membership in the
513 Marine Engineers Beneficial Association. It alleges he was discriminated against because of his membership in the National Maritime Union.

Mr. BELL. No; it is our contention still, Mr. Examiner, that the Marine Engineers Beneficial Association is an affiliate of the National Maritime Union.

Trial Examiner SEAGLE. Well, if that was true, even if that were true, then that still would not be the same organization, would it?

Mr. HOSKINS. I think so, Mr. Examiner. The National Maritime Union is a parent body.

Mr. BELL. Suppose I bring out some of the facts by the witness——

Trial Examiner SEAGLE. Well, I want to know whether the testimony is relevant. I do not see that it is relevant. Will the witness leave the room while we discuss his testimony.

(Witness leaves hearing room.)

(Discussion off the record.)

(Witness returns to hearing room and resumes the stand.)

Trial Examiner SEAGLE. Now, will you proceed.

Mr. HOSKINS. At this time, Mr. Examiner, counsel for the Board moves and requests permission to amend its amended complaint in this matter by adding to paragraph 5 on page 4, after the words: "National Maritime Union of America", the following:

513½ "With the exception of said C. J. O'Connor, second assistant engineer of the Steamship "Azalia City," and as to him for the reason that he joined and assisted a labor organization known as the Marine Engineers Beneficial Association, and because all of the above named employees"—the rest of the paragraph to remain the same,

with the exception of the word "and" in the same line; the word "and" to be deleted.

Trial Examiner SEAGLE. Is there any objection to that motion?

Mr. MCCORVEY. No, sir; none whatever.

Trial Examiner SEAGLE. The motion is granted.

Mr. MCCORVEY. And I would like to make this amendment to paragraph 5 of our answer to the amended complaint, in the 5th line, paragraph 5 reading:

"This respondent denies that it terminated the employment of any of the employees named in the complaint as last amended and refused to reinstate them for the reason that the said employees joined and assisted a labor organization known as the National Maritime Union of America"—at that point, right after "America" and before the words "and this," add the following:

"And denies that it terminated the employment of C. J. O'Connor, second assistant engineer of Steamship "Azalea City," for the
514 reason that he joined and assisted a labor organization known as the M. E. B. A."

Trial Examiner SEAGLE. The motion is granted. Will you proceed now?

By Mr. BELL:

Q. I show you this pamphlet, Mr. O'Connor, for your examination, and ask you if this is a copy, a printed copy of this agreement?

A. Yes, sir.

Mr. BELL. I want to introduce this as Board's exhibit 11.

Trial Examiner SEAGLE. Any objection to the admission of this contract?

Mr. MCCORVEY. None, sir.

Trial Examiner SEAGLE. The agreement will be admitted in evidence as Board's exhibit 11.

(Thereupon, the document referred to was received in evidence and marked "Board's Exhibit No. 11.")

Q. Mr. O'Connor, have you ever worked more than eight hours continuously for the Waterman Steamship Corporation?

A. Yes, sir.

Q. On what ship?

A. I worked on the "Azalea City" in every port, except Mobile, from eight o'clock in the morning until five o'clock in the afternoon. What I mean by that is all engineers turn to work at eight o'clock in the morning in every port, except Mobile, and worked from
514½ eight to twelve with an hour off for dinner from twelve to one, and from one to five they work four more hours, which is an eight-hour day at five o'clock in the afternoon, and one engineer has to remain on until eight o'clock the next morning, on each ship, and then he works day and night, and there is the machinery to be looked after down below; and his license is at stake, if he goes to sleep his license is revoked, but at night he may get an hour's sleep, or maybe not, and then, from eight o'clock the next morning you have to work

until five o'clock the next afternoon, which means that you work an extra day every third day, and the Copeland law strictly says a man cannot work over eight hours a day. This was not voluntarily; my working was against my will, under protest on those extra hours.

Q. Mr. O'Connor, while you were employed on the Waterman ships as second assistant, on the S. S. "Azalea City," were you asked by the other engineers on that ship to represent them in complaining to your superior concerning the rate of pay and hours of employment, and working conditions in general?

A. The rate of pay, there was no complaint about the rate of pay, but they asked me to represent them in Manchester, England, where I complained about the working hours, working over eight hours a day, and our complaint was that we worked eight hours a day and the chief made us work then all night long too, and all the next day, and we wanted to have something said about it in
515 Mobile, and I met the chief, and made the chief insert this in the log book, that we were working those hours, those watches, under protest.

Q. And you made this complaint?

A. To the Chief Engineer, who was the head of the ship, head of the department.

Q. Did you act as the spokesman for the other two engineers at the time you made the complaint?

A. Yes, sir: I was the spokesman.

Q. And you were told by the Chief Engineer when you arrived in Mobile that he would take it up with the other officials of the company?

A. That he would straighten it out in Mobile; yes, sir.

Q. Do you know, Mr. O'Connor, of your own knowledge, whether the chief engineer, that you filed this complaint with, did say anything about it after you got to Mobile?

A. We did at Gulfport, we all complained to the chief about it, about the number of hours we worked overtime, and when we got to Gulfport, Mr. Ingram, the port engineer, came aboard the ship, and the chief said he talked to Mr. Ingram about this overtime, and afterwards Mr. Ingram came up on the deck and asked me about this overtime, and we talked back and forth, and I told him it was not right, and something should be done about it, and Mr. Ingram said, "O'Connor, I tell you what to do. When you get back to Mobile, take your vacation," and he said, "We will straighten this out
515½ in Mobile," and I said, "Yes," so I went to the other two engineers and told them what he said he would do. And Mr. Pearsall, business agent of the M. E. B. A., tried to get a conference with Captain Nicolson and have some understanding about what our working agreement calls for, and under our agreement, in the case of a misunderstanding, two engineers and two officials and a third disinterested party could come in and decide, and while we could not get any satisfaction out of Mr. Pearsall, when I got to Mobile,

I left the ship, and on the 15th day of July I had my clothes and I walked down the dock and I saw Mr. Ingram, and I said, "How about that vacation?" and he said, "Mr. Lemon is handling that."

Q. You stated that you were leaving the ship. I will ask you under what circumstaces you were leaving the S. S. "Azalea City," why you were leaving the ship?

A. Well, because I was promised a first assistant job on a coastwise ship.

Q. You were promised another job?

A. Yes; on a ship coastwise, when I left Mobile on that trip, in the fire room, when we had boiler inspection, Mr. Ingram told me he would fix me up when I got back.

Q. Were you also promised a vacation upon your arrival in Mobile?

A. I was promised that in Gulfport, I was not promsed that
516 in Mobile, I was promised that in Gulfport on arrival in Mobile.

Q. And then you were to take your vacation?

A. I was to get it, and this other thing would be straightened out.

Q. And you were proceeding to leave the ship pursuant to those promises?

A. Yes, sir; that is the understanding under which I left the ship.

Q. Did you voluntarily resign from the S. S. "Azalea City" at the time you left?

A. No, sir; I did not.

Q. Did you ever receive your vacation?

A. No, sir.

Q. Have you ever received your overtime pay?

A. No, sir.

Q. Have you ever received this other job that was promised to you?

A. No, sir.

Q. I will ask you if, as a result of the conversation that you had with various officials of the Waterman Steamship Corporation and the promises that you received from them, had you not received such promises from these various officials, would you have left the S. S. "Azelea City"?

A. No, sir.

Q. I do not recall, Mr. O'Connor, whether or not you had
517 stated in your previous testimony what day the S. S. "Azalea City" arrived in Mobile?

A. On the 13th of July.

Q. The 13th?

A. No, sir; on the morning of the 14th, and she sailed on the 15th. She was only in one day.

Q. Was the position held by you on the S. S. "Azalea City" filled by anyone else?

A. After I got off, yes; a man by the name of Smith relieved me.

Q. Do you know whether or not he sailed with the S. S. "Azalea City"?

A. Yes, sir; he sailed, because he was late coming down and I worked that watch for him.

Q. I want you to be positive as to that date, as to the arrival of the S. S. "Azalea City" in Mobile, was it July or August?

A. It was in July.

Q. July 16th?

A. The 14th.

Q. And what was your salary while you were employed by the Waterman Steamship Corporation on the S. S. "Azalea City"?

A. $170 per month.

Q. And subsistence?

A. Well, of course, not while you were off the ship.

518 Q. The $170 a month included it, or did you have to pay for subsistence?

A. No, sir.

Q. Do you wish to get your job back with the Waterman Steamship Corporation?

A. Yes, sir.

Q. Have you asked for your job?

A. One day I did.

Q. Who did you ask?

A. I saw Mr. Ingram on the street after we had this other case, this Copeland law case, and I asked him if he would give me a job back again, and he said he did not know; he did not say he would and he did not say he would not.

Q. But you have not been back to the Waterman Steamship Corporation since?

A. No, sir.

Q. Have you worked any since you left the S. S. "Azalea City"?

A. I worked seventeen days.

Q. For whom?

A. As a machinist in a shipyard.

Q. What did you get for that?

A. 92½ cents an hour.

Examination by TRIAL EXAMINER:

Q. Which shipyard was that?

A. The Alabama Dry-Dock & Ship Building Corporation.

519 Q. Did you say how much you got?

A. 92½ cents an hour.

Q. How many hours a day did you work?

A. Eight hours a day.

Q. Regularly every day?

A. No, sir; I have only been working the last few weeks.

Q. When you were working, did you work eight hours every day?

A. Yes, sir.

By Mr. BELL:

Q. I will ask you, Mr. O'Connor, do you know from your experience and knowledge, what is the custom with respect to engineers being called for service at the time the boat on which they previously worked is ready to go out on its next voyage?

A. Well, when you come in you pay off and then you start port pay, the same rate of pay as sea pay.

Q. There is no distinction between port pay, I mean as far as salary is concerned?

A. No, sir; the only thing you are not under contract after you pay off, while you are in port.

Q. Are engineers hired through the unions or are they hired directly?

A. Directly through the office, through the company's office.

Q. You mean the company's office?

520 A. No, sir; the union office—yes, through the port engineer.

Q. Have you ever been called to report for duty on the boat that you previously worked when it was ready to go out on its next voyage?

A. I don't quite understand how you mean that. Do you mean coming in on a boat and being called back to it?

Q. Yes.

A. Well, we never leave off.

Q. You do not leave off?

A. No, sir; we stay right at work every day.

Q. Engineers are not considered as leaving the boat whether in port or at sea?

A. No, sir; unless they quit or are discharged.

Q. Has Waterman ever called you back to take a job on a boat that was prepared to go out?

A. When I was not employed?

Q. Yes.

A. Yes, sir; they have my telephone number and have called me on numerous occasions.

Q. About how many times have they called you?

A. For the last two years, for a while, I was called as relief engineer and engineer and machinist over 45 to 50 times in the last few years.

Q. But they have not called you since your arrival in Mobile

521 on the S. S. "Azalea City"?

A. No, sir.

Q. I believe you stated that you wanted your job back with the Waterman Steamship Corporation?

A. Yes, sir.

Mr. BELL. That is all.

Examination by TRIAL EXAMINER:

Q. Did you state what your rate of pay was while you were employed with the Waterman Steamship Corporation?

A. On the ship?
Q. On the "Azalea City"?
A. Yes, sir; $170 a month.
Q. Plus subsistence?
A. There is no subsistence as included in your pay.
Q. I mean while you were on the boat, you have no living expenses?
A. No, sir; but according to our contract we are allowed $2.50 a day for eating and $2.00 for a room, in case you are in port and in case they don't feed you and sleep you.
Q. That is while you are in port?
A. Yes, sir; that is while they are not feeding you or sleeping you on the ship.
Q. But while you are on the ship you get $170 a month plus your food?
A. Yes, sir.

522 Cross-examination by Mr. McCorvey:

Q. Mr. O'Connor, I understand you are a member of the M. E. B. A.?
A. Yes, sir.
Q. And all of the other engineers in the employee of the Waterman Steamship Corporation, as far as you know, are likewise members of that same organization?
A. Yes, sir.
Q. Now, the statement was made here that the Waterman Steamship Corporation terminated your employment for the reason that you had joined or assisted a labor organization known as the Marine Engineers Beneficial Association, is that correct?
A. That is my complaint.
Q. That is correct?
A. Yes; as I was fired for being the spokesman for these engineers complaining about working overtime.
Q. In other words, it is not your understanding that your employment was terminated for the reason that you had joined this labor organization?
A. No, sir.
Q. I believe you said, in fact, that all the other members, all the engineers, belonged to the same organization?
A. Yes, sir.

523 Q. Mr. O'Connor, I believe that you stated that you worked over eight hours a day.
A. Yes, sir.
Q. I notice in this paper here, which you identified, this agreement, section 14, provides this: "Work in excess of eight hours shall not be performed unless the work is done by the authority of the Chief Engineer or owner of the vessel"?
A. Yes, sir.
Q. This was done by authority of the Chief Engineer, was it?

A. Well, he did not order it directly, but I told him, he said, "We are going to have to stand these night watches," and I said, "If we have to stand these night watches, Chief, you put that in the log book." That was in Manchester, our first port of arrival, and I said I did not want to stand these watches for any amount of money, and I said, "If you insist on us standing these watches, you put that in the log book," and I was speaking for myself and the other engineers, so we will have something to show when we got to Mobile, and he said, "All right."

Q. It was authorized by the Chief Engineer?

A. Well, he put it in the log book.

Q. And when this section of the contract was inserted: "Work in excess of eight hours shall not be performed unless the work is done by authority of the Chief Engineer or owner of the vessel," it
524 was contemplated that you would at times work over eight hours?

A. For the safety of the ship; according to that contract, we were not supposed to work over eight hours a day.

Q. Mr. O'Conner, relative to this vacation you were to have. How many months in 1936 did you work for the Waterman Steamship Corporation?

A. I think about six on ships, and more than that counting the shop.

Q. Well, all together how much did you work?

A. Oh, I don't know, maybe nine or ten months.

Q. At the time there was this first conversation, first discussion about your taking a vacation, did you know at that time that the Waterman Steamship Corporation did not give any vacation to any employee who had not been at sea for at least twelve months in the previous year?

A. No, sir; and I would ask a point of information, Mr. McCorvey—I was not insisting on any vacation, only that Mr. Ingram told me, when I got in Gulfport, to get off and take a vacation, have my vacation.

Q. And he thought you were entitled to one?

A. I guess he did.

Q. But when you went up to the Waterman office, you found out, under their rules and regulations, that no vacation was given unless the employee had been to sea for twelve months of the preceding year, is that right?

525 A. No, sir; that was not explained to me; it was just said I would get it. I am not kicking about the vacation, but it is the overtime I am kicking about.

Q. You know that section 18 of this contract provides: "All engineers in the service of the company one year from the time of entering the employ of the company, shall be allowed 15 days' vacation with pay each year thereafter"; do you not?

. Yes, sir, and I will speak again, Mr. McCorvey, and say I was looking for a vacation. The man really told me about taking My chief complaint is working these extra hours.

. Now, Mr. Bell asked you about certain customs. I will ask this: Where a contract required a preference to be given to mem- of a certain union, it is customary, is it not, for that preference e given?

. Yes, sir, under the Marine Engineers.

. Or any other branch of the service, where there is a contract ween the ship owner and any other union?

Ir. Lustig. I object to that question.

Ir. McCorvey. Will you let me finish my question?

. (Continuing.) Or any other branch of the service where there contract between the ship owner and a certain union that members of that union should be given preference of employment by the ship owner, it is customary, is it not, for that provision of the contract to be carried out?

Ir. Lustig. I object to that on the ground that it is not relevant he has not qualified as to what is customary in any other branch he service. He is an engineer and he cannot qualify as to customs vorkers in any other branch.

Trial Examiner Seagle. The objection is sustained on that and er grounds.

. Mr. O'Connor, when you got down to Gulfport and met Mr. ram, didn't you first request him to be relieved when you got to bile?

. When we left Mobile the first time, when we left Mobile on last voyage, Mr. Ingram came to me in the fireroom and I asked to go on a coastwise boat, because I had been on one, two or three s before; he came to me there in the fireroom and he told me he ected to fix me up when I got back. When we got to Gulfport mplained to him about this overtime and then he told me about vacation and such, and then I asked him and he said he would ighten it out in Mobile, and then I asked him about the coastwise

. You did not ask to be relieved?

. No, sir, I did not, only for a coastwise boat. I did not say I wanted to quit.

Q. Who did you say you went to in Waterman's to ask for employment after this incident?

The only person I contacted that I saw, was Mr. Ingram one on the street, after I had this Copeland hearing.

And what was your conversation?

Well, we got to talking, and I asked him about employment, ted him would he give me another job, and he said he did not r, he did not say he would and he did not say he would not.

Q. And that is the only talk you had with him?

A. Yes, sir.

Q. Did you ever go up to the Waterman office in the bank building here and ask for employment?

A. No, sir. Mr. Ingram is the port engineer, and he does the hiring.

Q. You never followed up the conversation to see whether or not he would give you a job?

A. No, sir.

Mr. McCorvey. That is all.

Trial Examiner Seagle. Do you have any questions on redirect, Mr. Bell?

Mr. Bell. Yes, sir.

Redirect examination by Mr. Bell:

Q. Mr. O'Connor, I ask you if the boat, the S. S. "Azalea
528 City," had departed before you ascertained whether or not you were to get this vacation?

A. Yes, sir; she came in on the 14th and sailed on the 15th; she sailed at night.

Q. So when you learned that you were not going to get your vacation the S. S. "Azalea City" was out?

A. She was at sea.

Q. You stated you were promised a coastwise job. What is the difference between a coastwise job—in other words, I will ask you this: Why did you prefer a coastwise job rather than a foreign job?

A. Because you would get home a little more often; because coastwise jobs you are gone about two or three weeks, and on the foreign boat you get home every six or eight months.

Q. I believe you are a married man?

A. Yes, sir; born and raised here.

Q. And what is Mr. Ingram's relation to you?

A. Mr. Ingram is the port engineer for the Waterman Steamship Corporation. He is the man who does the hiring and firing.

Q. Is he your superior?

A. Yes, sir.

Q. Mr. McCorvey asked you about whether you went up to the Waterman office here in Mobile and asked for your job back. I will ask you if, after a person has worked as you have testified,
530 five or six years with one concern, and during that time have been called 40 or 50 times for duty, that you would be required to go to the Waterman office in Mobile and ask for a job?

A. No, sir.

Recross examination by Mr. McCorvey:

Q. Mr. O'Connor, in maritime and shipping language, when you refer to a ship entering port for prompt reshipment, what is meant by that?

A. I never heard that word used before in maritime circles in my nty years at sea.
Q. You are not familiar with maritime contracts?
A. Well, I signed articles, but I never heard of prompt reship-nt.
Q. And you have never read any maritime contracts?
A. No, sir.
Q. Naturally you wouldn't know anything about it?
A. (No answer.)

Examination by TRIAL EXAMINER:

Q. Did you say that when you got back here, you tried to see the resentative of the union, that is, the Marine Engineers Beneficial ociation?
A. Yes, sir.
Q. And whom did you try to contact?
A. Well, I tried to get him to try to talk to Captain Nicolson, to try to get the matter straightened out under that agreement for eight hours a day.
Q. Did you contact him for the purpose of taking up your evance with the company?
A. Yes, sir.
Q. And when did that occur; was that during your vacation iod?
A. I came in on the 15th and it was between the 17th and the h—around the 27th I tried to get him to straighten that out.
Q. You came in on the 15th of August?
A. July.
Q. And what did he tell you?
A. He said he could not do anything; he said everything will ust itself.
Q. Have they an office here in Mobile?
A. Yes, sir; the Marine Engineers Beneficial Association.
Q. And nothing was done about it?
A. No, sir.

Mr. BELL. Mr. Examiner, at this time I would like to make an nouncement. It is necessary that I leave this hearing at this time, with the Examiner's approval. I ask to be excused, because I to go back to the Regional Office in New Orleans.

Trial Examiner SEAGLE. Will the Board be represented by Mr. Hoskins?

Mr. BELL. Yes.

Trial Examiner SEAGLE. Very well.

Mr. LUSTIG. And at this time also, Mr. Trial Examiner, I want withdraw the request for subpoenas for witnesses which I made behalf of the Union this morning.

Trial Examiner SEAGLE. All right, the request is withdrawn.

(Witness excused.)

JAMES DRURY a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. HOSKINS:

Q. Where do you live, Mr. Drury?
A. 161 Madison Street.
Q. Is that in Mobile?
A. Mobile, Alabama.
Q. What is your present occupation?
A. I am delegate for the National Maritime Union.
Q. Is that a paid position in the Union?
A. It is a salaried position.
Q. Whereabouts are your headquarters?
A. 76 Government Street, Mobile, Alabama.
Q. Have you ever gone to sea as a seaman?
A. I have been going to sea for the last ten years.
533 Q. And how recently have you sailed?
A. The last vessel I sailed on was the "Point Caleda," and I got back here on June 24th, 1937.
Q. And how long have you been delegate for the National Maritime Union?
A. I have been delegate for the N. M. U. since that period.
Q. Since June 24th, 1937?
A. Right.
Q. And you have been at Mobile ever since?
A. Yes, sir.
Q. What were you, when going to sea, what was your rating, capacity, or position?
A. I was an able seaman.
Q. Now, as an able seaman, what ports did you sign articles in and sail out of?
A. San Francisco; Seattle; Port Arthur, Galveston, Texas; New Orleans, Louisiana; and New York.
Q. And will you state a few of the lines on which you have sailed, Mr. Drury?
A. Texas Oil Company, the American Export Line, Gulf-Pacific Line, the Standard Oil Company of New Jersey, the Cities Service Company.
Q. Have you ever belonged to the I. S. U.?
A. Yes, sir; I was a member of the I. S. U.
Q. Did you hold any office in the I. S. U.?
534 A. Never held office in the I. S. U.
Q. Have you ever done any shore work in the steamship business?
A. By shore work you mean work——
Q. I am not too familiar with the various descriptions, but I mean work on ships or the shipping industry, but not going to sea.
A. You mean working for the ship owners?

Q. Yes; but I don't mean any particular thing, I didn't have any rticular thought in mind. I was just trying to establish your perience in the shipping industry.

A. Well, during the last ten years I have been connected with the pping industry either as delegate for the National Maritime ion, and delegate and secretary for the Marine Workers Industrial ion.

Q. When did you join the Marine Workers Industrial Union?

A. In 1934.

Q. And you say you were secretary-delegate for them?

A. In New Orleans; yes, sir.

Q. Just for the record, so that it might be clear, is the Marine rkers Industrial Union still an active organization?

A. No, sir.

Q. What became of it?

A. That union was disbanded and the membership went into the International Seamen's Union.

Q. While you were a member of the International Seamen's Union did you take an active part in that union?

A. Yes, sir; when I entered the International Seamen's Union I k an active part in everything, in building up the union, recruiting memberships for it and carrying on educational work among the mbership, against the corrupt officials.

Q. Mr. Drury, have you been present at the hearings, the entire arings in this case?

A. Yes, sir; I have been present throughout the hearing.

Q. Merely for the purpose of abbreviating the record as much as sible, have you heard the general line of questions we have put to the customs, the various customs?

A. Yes, sir; I have.

Q. And I will ask you if the information that has been given answer to those questions, as put by counsel for the Board, is stantially correct?

A. They are substantially correct.

Q. Now, will you tell us some of the duties of a delegate?

A. The duties of a delegate are, as you know, to go aboard the , soliciting memberships, straightening out any disagreements t might have arisen between the crew and the owners of the ves- to collect dues and to advise with the union members on union cy.

Q. Now, as a delegate, carrying out the duties of a delegate, did you ever have occasion to visit ships that were tied up for repairs or in dry-dock?

A. During the last four months' period as delegate of the ional Maritime Union, I have had occasion to visit approxi- ly 50 ships in the Alabama dry-dock.

Q. And I will ask you if on these 50 ships you have visited while ry-dock, have you ever known of any one ship wherein the whole was laid off where the boat went into dry-dock?

A. I know of one ship only, and that ship laid off its crew after being in the dry-dock; that was the Lykes Brothers ship, the "Volunteer."

Q. Now, as to the other 49, approximately, what was the situation as to those?

A. The crew that came in on the vessel, the biggest majority, I believe, sailed with the vessel.

Q. And were the crews or the substantial number of crews on board the vessel, while the vessel was in dry-dock at the time you visited them?

A. Yes.

Q. Now, these crews that were on board, were they working on board?

A. Yes, sir; they were engaged in general work aboard the ship.

Q. Will you explain just briefly what you mean by "general work"?

537 A. Well, there is so much work to be done aboard a ship, and a good many of them, with the young men now especially prevalent in the merchant marine, they do not have time, while in port, to do this work; for instance, painting over the side; the entire ship's side is usually painted in drydock, in addition to below the water line.

Q. And is that done by members of the crew?

A. By members of the crew generally.

Q. You stated that this "Volunteer" was an exception. Do you know of your own knowledge whether or not the crew that brought that ship into dry-dock sailed the ship when it went out again?

A. Some of the members of that crew who brought it into drydock sailed the ship.

Q. Do you know whether the company kept the jobs open for the crew?

A. The company kept the jobs open.

Q. Now, I ask you, going on your experience, to state what is the average, what are some of the maximum lengths of time you have known vessels to be in drydock and the crew to be retained?

A. Speaking for the period only of the last several months, I know specifically of the Cities Service, one of the Cities Service tankers—I just cannot recall the name of it now—was in drydock for a

538 period of 45 days and maintained its crew during that period.

Q. Can you think of any other lengths of time, anywhere?

A. Several of the Gulf's tankers were in for thirty-day periods in the last several months and maintained their crews, and there have been numerous instances of crews on ships laying in there from five to ten days, fifteen days, where the crews were maintained.

Q. Have you ever been on a boat yourself that has gone into drydock?

A. I was aboard a Texas oil tanker, the "Virginian," and we laid up at the Erie Basin Todd's drydock in New York for 22 days.

Q. Was the crew kept on board at that time?

A. The entire crew was kept on board that ship.

Q. You said you have been a member of the M. W. I. U., I. S. U., and the N. M. U.?

A. Yes.

Q. Have those unions all recognized and followed that custom?

A. Yes, sir; they have followed that custom.

Q. One more point on general experience. If a man's work is not satisfactory, and he is to be fired, when is he generally so notified?

A. Usually a day or two before the vessel's arrival in port.

539 Q. And in the general parlance of the sea, when you speak of signing off or discharge, or signing your discharge before the Commissioner, or using the word "discharge" with reference to the termination of your articles, is that understood by anyone as meaning a complete discharge and severance from employment?

A. No, sir; it is not.

Q. In other words, there are really two meanings to the word "discharge" as affecting men in the Seamen's trade, is that correct?

A. Correct.

Q. Now, referring once again to these customs, which we have had testimony about, and about which you have testified, do you know whether or not these customs have been followed by the Waterman Steamship Corporation on their ships?

A. Not from personal knowledge, but I do know from hearsay.

Q. Well, now, you speak of "hearsay." Is that hearsay information that has come to you as an officer of the Union from the members of the Union?

A. Yes, sir.

Q. And what is the information that you got from that source?

A. From all the members that I have interviewed, who have been in ships in drydock, or laid up at docks, the only occasion where the entire crew has been discharged has been in the case of the "Fairland" and the "Bienville."

540 Q. And as delegate, is that, you might say, an official or quasi official duty, to determine the status of the men when they come into the port of Mobile, when their boat goes into drydock?

A. I don't follow you.

Q. Perhaps my question is a little vague. This information that you stated you had from interviewing the men, you gathered this information, was that interviewing done in the line of your official duties as delegate of the N. M. U.?

A. Yes, sir; it was done in connection with the discrimination on the "Fairland" and on the "Bienville."

Q. And I ask you, as a matter of ordinary course, would the delegate, or would the local union be interested in knowing whether or not a crew was to be kept on board, if a vessel comes in and goes into drydock?

A. Well, we naturally assume they would be kept on board.

Q. And would you be interested in knowing whether they were to be kept on board?

A. Yes, sir.

Q. And if they were not kept on board, would you immediately have their names placed on the ship's list, is that correct?

A. Correct.

Q. Now, as an official of the union and in carrying out your
541 contracts with the various steamship corporations, with which you deal, as an official, have you ever known of a steamship company to dispute these customs?

A. No.

Q. One further question. Does anyone of those with whom you come in contact, and we have referred to the members of the crew, union members, the companies, the union officials, do any of those parties consider that the expiration, the mere expiration of articles creates a vacancy?

A. Not to my knowledge and experience; no, sir.

Mr. Hoskins. That is all.

Cross-examination by Mr. McCorvey:

Q. Mr. Drury, you say you are a salaried delegate of the N. M. U.?

A. Yes, sir.

Q. What is your salary?

Mr. Hoskins. I object to that question, Mr. Examiner. I do not see where it has any relevancy whatever in this case.

Trial Examiner Seagle. The objection is sustained.

Mr. McCorvey. We except.

Q. Now, these vessels in drydock, that you have visited, where you say you have seen the crew or most of the crew on board, were they vessels in the home port or not?

A. I don't know what you construe as the "home port."

Q. Waterman Steamship vessels sailing out of Mobile, Mobile is the home port; that is, if you are familiar with maritime
542 terms.

A. Many of these vessels, such as one at the present time, the "Alpha," Mobile could be construed as the home port.

Q. In other words, you don't know what the home port of the vessel is?

A. I know, generally.

Q. The vessels that you visited in drydock, where most of the crew were kept on board, were they or not vessels which were away from the home port?

A. There may have been some that were.

Mr. McCorvey. Will you read my question again?

(Question read.)

Mr. Hoskins. Mr. Examiner, I don't see how that question can be answered differently.

Trial Examiner Seagle. You mean by your answer you don't know whether they were or not?

The WITNESS. Many of those vessels, Mobile could be considered as the home port and any other port could be considered as the home port.

Trial Examiner SEAGLE. Just what do you mean by that, doesn't the vessel have a home port?

The WITNESS. Some of them have ports of registry and others chartered by steamship owners, and they ply to any particular port along the coast, and in connection with the "Alpha," which is in drydock at this particular time——

543 Trial Examiner SEAGLE. Do you mean they do not have any home port?

The WITNESS. They may have a port where they have an office.

Q. You don't know whether the vessel had a home port?

A. I don't say that; I said there may have been some.

Q. Do you know that vessels do have what is known as a home port?

A. Generally speaking; yes.

Q. Generally speaking, the vessels which you have boarded and on which you have seen the majority of the crew on board the vessels, while the vessels were in drydock, were or not those vessels in their home port?

A. There may have been some of them that were.

Q. And that is the best answer you can give?

A. That is the best answer I can give.

By Mr. HOWARD:

Q. Mr. Drury, you are the agent of the National Maritime Union and have had ten years experience, you say, handling affairs of different unions and being associated with different unions?

A. I don't recall saying that, Mr. Howard?

Q. How many years experience have you had?

A. In what?

Q. In being a member of a union, you said that you are the delegate of the National Maritime Union and have been affiliated

544 with the International Seamens' Union, and you tried to get people to join; I mean in all of those union activities, how many years experience have you had?

A. I have taken an active part in the labor movement for the last five years.

Q. And you are familiar with what are the purposes of the National Maritime Union, aren't you?

A. Fairly familiar.

Q. Its purpose is to look out for the interests of its members in the matter of fixing working conditions, hours of working, salaries, wages, and the like of that?

Mr. HOSMER. I object to that question, I don't see where the purposes of the National Maritime Union has any relevancy in this case.

Trial Examiner SEAGLE. I don't see that that is a proper question. This witness cannot testify as to the purposes of this organization.

Mr. HOWARD. We except.

Q. I will ask you if it is not a fact, from your knowledge, of the National Maritime Union, that its purpose under the present situation as it exists in the port of Mobile, has been to get its men on all of these Waterman ships and to get the International Seamen's Union men off of them?

Mr. HOSKINS. I object to the question.

Trial Examiner SEAGLE. Sustained.

546 Mr. HOWARD. We except.

Q. You spoke a while ago, Mr. Drury, of a custom existing, by which you claim that a sailor, having been paid off and discharged at the final port of discharge, still had some sort of right to be connected with the ship. Do you know of any such right that has ever been claimed by union men, when having been employed on a ship as a union man, that they abandoned the union and came back to port——

Mr. HOSKINS. I object to that question.

Trial Examiner SEAGLE. Sustained.

Mr. HOWARD. We except.

Q. Isn't this true, Mr. Drury, that instead of it being a fact that the seaman, having completed his voyage, and having changed to a different union, instead of having any prior right to go out with that ship on a return voyage, what he really sought to accomplish by joining the National Maritime Union was to get an exclusive right to man that ship on her return voyage, and to put off of that ship all of the members of the International Seamen's Union, which was then and there having a fight with that union; isn't that the truth?

Mr. HOSKINS. I object to that question.

Trial Examiner SEAGLE. I sustain the objection. Mr. Howard, I must request you not to ask the same question in different form, when I have already ruled that it is improper.

547 Redirect examination by Mr. HOSKINS:

Q. Mr. Drury, just one or two questions. The home port of a ship, what do you understand by that term?

A. Generally, it is known as the port where it maintains its offices.

Q. And if a steamship company has offices in more than one port along the coast, is there any rule by which any one given port is called the home office, or it it a matter of election by the steamship companies?

A. No; generally where they have their main office. I might be more specific.

Q. And there again; is it not true that it is up to the company where they care to place their main office?

A. Correct.

Q. And if they choose to move their main office from one port to another, then it is likewise up to the company where they care to name the home port of a vessel, is that not correct?

A. Yes, sir.

Q. And if a steamship company has vessels that contact several coastwise ports, either in connection with or separate from foreign ports, is there any way of looking at that vessel and knowing whether it is in its home port or not?

A. On some vessels it is impossible, or almost, to determine where their home port is, for the principal fact that they may
548 have been chartered by some other steamship company and are working for the steamship company.

Q. And if a boat is chartered by a steamship company from an owner, and the owner has had one port that he has cared to call the home port of that boat, and the charter party, I believe that is the correct term, the one who charters the boat, do they give it another home port, or does the boat keep its original home port?

A. It would really go to the party who had chartered it.

Q. In the port of Mobile, how many steamship companies operate in and out of this port, to your knowledge?

A. The Waterman Steamship Corporation and its subsidiary that operates the Pan boats; the South African Line signs in here; the New York & Porto Rican Lines signs in ships, the Aluminum Line and various others, the Lykes Brothers Steamship Company and various oil companies send in their fleets for repairs; the Texas Oil Company sends in its ships with cargo, as does the Coastal Petroleum.

Q. In other words, there are several steamship lines operating in and out of the Port of Mobile; isn't that true?

A. Correct.

Q. And, as a matter of law, then, a great percentage of the boats that are in dry-dock here cannot be in their home port while they are in dry-dock here?

A. Yes sir.

549 Q. In other words, the Alabama Dry-Dock Corporation, to your knowledge, does not limit its work to any one line of boats?

A. No sir.

Q. And in your inspection of boats that were in dry-dock, can you estimate the percentage of those that were in home ports at Mobile, as you would call it?

A. You mean whom you could construe as being in the home port of Mobile?

Q. Yes.

A. I mentioned a figure of approximately 50, and I would say 10 of those could be construed as being in their home port, in this port.

Q. One further question. When ships are engaged in coastwise commerce, is it not true that the men engaged in that boat sail under articles?

A. Articles is not signed by the shipping Commissioner, but they do have articles that they do sign.

Q. Do you know as a matter of fact whether those articles guarantee any given length of employment, and guarantee a return to a given port?

Mr. McCorvey. Mr. Hoskins, the Waterman Steamship Corporation has no coastwise boats.

Mr. Hoskins. I recognize that fact, Mr. McCorvey but we are discussing here, the question of home ports of various
550 boats.

Mr. McCorvey. Well, that is required by statute——

Mr. Hoskins. It is still a point of information. Are you making objection to my question?

Mr. McCorvey. The only thought is, you are questioning him on coastwise vessels and the Waterman Steamship Corporation is not engaged in coastwise business, and we are going into matters which cannot possibly have any relevancy in this cause. Their vessels are engaged in foreign trade as shown by the pleadings.

Trial Examiner Seagle. If you do not object, the witness may answer the question. What was the last question?

(Record read.)

Mr. Hoskins. That is all.

Trial Examiner Seagle. Do you have any questions, Mr. McCorvey?

Mr. McCorvey. I don't think I want to ask him anything.

Mr. Howard. I have a question I would like to ask the witness.

Trial Examiner Seagle. Are you sure it is relevant?

Mr. Howard. I cannot tell what the Trial Examiner may think is relevant. I have tried to ask relevant questions, but I do not seem to be able to succeed. I am not trying to be obstreperous in the matter, Mr. Examiner.

By Mr. Howard:

551 I just want to ask you, as an expert, having observed and seen conditions existing on ships at sea in the last few years, and knowingly exactly what the conditions are among the unlicensed personnel on ships, I want to ask you if you think it is reasonably possible to operate a ship out of the Port of Mobile with part of the crew belonging to the National Maritime Union and part of it belonging to the International Seamen's Union?

Mr. Hoskins. I object to that question on the same ground.

Trial Examiner Seagle. I am afraid I will have to sustain that objection, Mr. Howard.

The witness is excused.

(Witness excused.)

Mr. Hoskins. Mr. Examiner, the Board wishes to announce at this time that it has completed the calling of its witnesses, all of its witnesses which it has available for its case in chief, and at the same time I want to make one or two motions.

In the complaint the Board alleged discriminatory discharges of one John R. Roberts and one Joseph R. McCoy of the S. S. "Pan American."

The respondent in its answer, paragraph 4, page 2, stated that, now reading from the answer:

"Insofar as John R. Roberts and Joseph R. McCoy are concerned, they were not employed by the Waterman Steamship Corpora-

552 tion, but this respondent is informed that they were employed by the Pan-Atlantic Steamship Corporation, an entirely separate and distinct corporation, which operates its own vessels".

In view of the answer of the respondent, the Board wishes to move to amend the complaint by striking from the complaint the names of these two men, and all reference to the steamship "Pan-American," advising that a separate complaint will be issued against the Pan-Atlantic Company.

Trial Examiner SEAGLE. I think the proper form of motion will be not to amend the complaint, but to dismiss as to these men.

Mr. HOSKINS. Very well.

Trial Examiner SEAGLE. I take it there is no objection to that kind of motion, and the motion is granted.

Mr. HOSKINS. The Board likewise moves to dismiss the complaint as to one Reese Bryars, listed in the amended complaint as a member of the crew of the S. S. "Fairland," on page four of the amended complaint, advising the Trial Examiner at this time that on further investigation, after the issuance of the complaint, it developed that this man was not properly a party to the complaint.

Trial Examiner SEAGLE. The motion to dismiss as to Reese Bryars is granted.

553 Mr. HOSKINS. Mr. Examiner, in closing our case in chief, with the witnesses we have put on the stand, I respectfully direct your attention to the fact that there were some 47 men named in the complaint, if our figures are correct, as to the crews of the S. S. "Fairland" and the S. S. "Bienville."

The life of a seaman, in the industry, on steamships, necessarily is a migratory occupation, you might say, and we have found that, from personal knowledge, these men are now at sea, and, of course, outside of the jurisdiction of a subpoena of the Board or of the Federal Government.

There is no dispute in the answer as to any peculiar characteristics of any one case, except the recent amendment of the respondent as to Pelletier, and bearing that in mind, we have attempted to introduce as much evidence as we could as to those missing witnesses.

If the Board finds further hearing is required on this, or if the respondent wishes to raise any objections as to any rulings in connection with these men who are not here to testify, then I presume further hearing will have to be held when these men reach a port where a hearing can be held and the Waterman Steamship Corporation properly served.

In closing our case in chief, of course, we wish to reserve the right to submit such witnesses in rebuttal as might be made necessary by the respondent's case.

Trial Examiner SEAGLE. Very well, the Board has now rested its case.

You may now proceed, Mr. McCorvey.

554 NORMAN NICOLSON, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. McCORVEY:

Q. Your name is Norman Nicolson?

A. Yes, sir.

Q. Captain, I wish you would state what your present occupation is?

A. Executive vice-president of the Waterman Steamship Corporation.

Q. How long have you been with that corporation?

A. Since 1919.

Q. About eighteen years?

A. About eighteen years.

Q. How long have you been connected with seafaring matters?

A. About thirty or thirty-two years.

Q. Will you please state to the Examiner what your experience has been in the various branches of maritime matters?

A. My experience has been ordinary seaman, able seaman, quartermaster, third mate, second mate, chief mate, master on all types of seagoing steamers; port captain of the Waterman Steamship Corporation, Lieutenant Commander in the United States Navy, port captain of the Waterman Steamship Corporation, operating manager of the Waterman Steamship Corporation, Vice-President
555 in charge of operations of the Waterman Steamship Corporation, and Executive Vice-President of the Waterman Steamship Corporation.

Q. Now, Captain, are you familiar with the contract which has been marked Respondent's Exhibit 14 here, and identified by the reporter, between the Waterman Steamship Corporation and the International Seamen's Union of America?

A. Yes, sir; I personally negotiated this contract with the International Seamen's Union.

Q. Is that a true and correct copy of the contract?

A. That is a true and correct copy of the contract, as amended in February 1937.

Q. When was the contract entered into on behalf of the Waterman Steamship Corporation?

Trial Examiner SEAGLE. You don't mean to say that this contract was amended in February, but you mean to say that this is the contract but for the amendment of February?

The WITNESS. Yes, sir.

Q. When was the contract entered into on behalf of the Waterman Steamship Corporation?

A. Our original contract with the International Seamen's Union was entered into in the early part of 1935, at which time the International Seamen's Union furnished us sufficient proof that they repre-

ented a majority of our men as collective bargaining agents, and when they submitted that proof to us, we immediately entered
56 into negotiations with them and worked out a satisfactory contract to our mutual benefit.

Q. Now, Captain, the contract there that you have in your hands, hat was entered into by the Waterman Steamship Corporation?

A. Yes.

Q. I noticed a large number of steamship lines listed, including he Waterman Steamship Corporation, that was entered into by your ompany on what date; do you remember?

A. If I remember correctly, I think it was around the 19th of Iarch 1936.

Q. About the 19th of March 1936?

A. About that time.

Q. The agreement is stated to be an agreement entered into the th day of March 1936 by and between these people and the companies, and signed by the Committee?

A. The reason we did not negotiate that contract on the 9th of Iarch, if I remember correctly, is I was called out of town. I was alled to Washington on business. I could not get back to Mobile, nd I connected with the Mobile office of the International Seamen's Jnion and requested that they have their New York office contact me, nd we entered into the agreement some eight or ten days after Iarch 9th, 1936.

Q. Now, Captain, I notice the Seagoing Personal Committee of Atlantic and Gulf shipowners; just what is that?

A. The Seagoing Personal Committee of Atlantic and Gulf
57 shipowners, that is, the American Ship Owners Association, and the gentlemen mentioned there are a labor committee of he shipowners. McCarthy is vice-president of the Isthmian; Kiggins vice-president of Bull; Aitken is vice-president of Moore & McCormack; Adams is with the Grace Lines; Robert Hand is with the Sinlair Oil in New York, and John Craig is with the Clyde-Mallory ine. Those men were nominated and elected at a meeting of the hipowners to meet with these various gentlemen mentioned here for he International Seamen's Union, and to work out various details f a contract and wage agreement and working conditions.

Q. Then, there is a signed copy which is filed with the Seagoing ersonnel Committee?

A. Yes, sir.

Q. In New York City?

A. Yes, sir.

Q. And you know that this is a true and correct copy?

A. Yes.

Mr. Lustig. May I ask, as far as the contract is concerned, Mr. ial Examiner, whether it is offered in evidence as a binding conict, or was it merely offered in evidence as a purported contract tween the Waterman Steamship Corporation and the International

Seamen's Union, because there has been no proof adduced that the contract was properly executed?

558 Trial Examiner SEAGLE. This witness testified that he was personally present at the execution of this agreement.

Mr. LUSTIG. There has been no proof adduced here as to the authority of the committee to execute this agreement, or rather the Reorganization Committee——

Trial Examiner SEAGLE. This agreement is not executed by the Reorganization Committee, it is executed by the International Seamen's Union of America.

Q. Now, Captain, I notice on the back of that contract there are several amendments made in September of 1936, and February of 1937. Those amendments only related to the scale of wages, didn't they?

A. I believe we amended this agreement on September 28, 1936, and gave an increase of five dollars, and on February 3, 1937, we made a further amendment and gave a ten dollar increase, and we increased the overtime rate.

Q. And the schedule of wages shown on Page 3, the number being shown on the bottom of the page, the schedule of wages shown there, and at the top of Page 4, are the schedules in force after the amendment of February 3, 1937, was made, is that correct?

A. Yes, sir.

Q. Now, Captain, since this contract has been made with the International Seamen's Union, by you as the chief operating officer

559 of the Waterman Steamship Corporation, has the Waterman Steamship Corporation faithfully lived up to that agreement?

A. We have endeavored to live up to that contract at all times, and I don't know of any occasion where the Waterman Steamship Corporation, at any time, violated their agreement.

Q. In that contract, Captain, reference is made under Section 1 of Article 2, at the top of Page 3, the page number being at the bottom of the page—"It is understood and agreed that, as vancancies occur, members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the respective positions." I will ask you to please state to the Examiner just what you have done under that clause of the contract?

A. At the time we entered into the agreement, our original agreement with the International Seamen's Union, I believe about eighty-five percent of our personnel were members——

Trial Examiner SEAGLE. Which year are you referring to?

The WITNESS. 1935. Prior to entering into the agreement, back in 1934, '35, '36, or '37, a great many of our members belonged to the International Seamen's Union.

Trial Examiner SEAGLE. You mean a great many of your employees.

The WITNESS. A great many of our employees. Shortly after we entered into the agreement, our crews were one hun-
560 dred percent I. S. U. We then employed all of our men through the International Seamen's Union Hall in Mobile and that is, when a vacancy occurred at any time, where we needed, say, six A. B.'s or two oilers, or any men, as we needed them, they would promptly fill the vacancies with men satisfactory to us.

Q. By "A. B.'s" you mean able-bodied seamen?

A. Able-bodied seamen.

Q. Has the International Seamen's Union lived up to this contract with your company?

A. They lived up to our contract with us, and they have been in a position to furnish us competent crews at all times.

Q. And they have furnished them?

A. And they have furnished them.

Q. Now, Captain, under this Section 1 of Article 2 that I referred to a moment ago, is a proviso as follows:

"Provided, however, that this section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt reshipment, or absence due to illness or accident."

Now, that clause, "prompt reshipment," are you familiar with that expression?

A. I am very familiar with it.

Q. Explain to the Examiner just what that means.

Mr. HOSKINS. Is he explaining what his understanding is
561 of that?

Q. I will ask you this: Has that a well defined meaning in maritime circles?

A. Prompt reshipment, or prompt ship, is something that is used daily in maritime circles.

By Trial Examiner SEAGLE:

Q. You mean that expression is commonly used in Maritime practice?

A. Yes, sir.

Q. Is it commonly used in maritime contracts?

A. Yes, sir.

Q. In what connection?

A. Well, when you are chartering a vessel, if you need a vessel, you will call your broker in New York to get a prompt vessel, and under that term "prompt vessel" is meant one that is ready to load cargo immediately.

Trial Examiner SEAGLE. That is not what we are talking about. We are talking about "prompt reshipment."

The WITNESS. "Prompt reshipment" is immediately, within twenty-four hours; "prompt reshipment" is a vessel ready to load cargo in not less than twenty-four hours.

By Mr. McCORVEY:

Q. If a vessel comes into port and is laid up for repairs, is that termed "prompt reshipment"?

A. No, sir.

Q. How about a vessel that comes into port and is laid up in dry dock for several days. Is that "prompt reshipment"?

562 A. No, sir.

Q. Captain, I believe the Waterman Steamship Corporation is only engaged in foreign service, is that right?

A. Foreign and Porto Rico.

Q. I mean not in coastwise service or American service?

A. No, sir.

Q. What is the practice, or what was done with regard to the crews of these two steamships in question, the "Bienville" and the "Fairland"; were those crews signed up for any particular time or for a particular voyage?

A. The crews of the "Bienville" and the "Fairland" were engaged in a round trip voyage. In the case of the "Bienville," the crew was engaged for a voyage from Mobile to European ports and back to her final port of discharge in the United States, which port was Mobile, Alabama.

Q. What about the "Fairland"?

A. The "Fairland" was engaged for a round-trip from Mobile and other Gulf ports, to San Juan and other Porto Rican Ports, and back for final discharge in Mobile, Alabama.

Q. Captain, during your thirty-four years of experience in the various phases of the maritime business, have you ever heard it contended before today, or before yesterday, that articles signed up by seamen for a voyage, that the term of employment is not concluded when they reach port?

A. No, sir; crews are engaged for a full voyage, for the

563 voyage by the boat, and not annually.

Q. And the employment is terminated?

A. Terminated at the end of each voyage.

Q. Thereafter is there any obligation on the part of the shipowner?

A. No, sir; and at the time the crew signs off they release and discharge us of all obligations and the vessel, in turn, releases them from all obligations.

Q. Do you know if that was done in this case?

A. I know it was done in this case.

Q. Mr. Dobbins, the United States shipping commissioner in this port has office records, has he not?

A. Yes, sir.

Q. And you have seen the records?

A. No, sir; I have not personally seen the records, but some of my men have seen them. I don't see the crews being paid off on their discharge.

Q. That is the custom and we can get the records from Mr. Dobs, the United States shipping commissioner?
A. Yes, sir.
Q. And the law requires, I believe, that the United States shipping mmissioner be present when these men sign off?
A. Sign off and sign on, that is correct.
Q. Captain, I want to ask you particularly about the "Bienville." When she came in and was laid in for repairs, did the fact that some members of this crew, or, I believe the figures show almost all of them, if not all of them, joined the National aritime Union, have anything whatever to do with the laying up this vessel for repairs?
A. No, sir. If I may, I would like to give you the whole history the "Bienville" from the time we purchased her.
Q. Yes.
A. About February of 1937 we purchased two vessels from the xport Steamship Company in New York, the "Exarch" and the Excelsior," which were later called the "Bienville" and the "Azalea ty."
At the time we purchased them, we were very busy in the port Mobile. We had more cargo than we were able to handle, and we d to move vessels out in a hurry and never were able to make the mporary repairs on them.
We got the "Bienville" to Mobile, kept her here a few days and nt her to Europe, not having time to repair her properly at our obile shops. She returned to Mobile and we loaded her out to rope again on a second trip. At the time we loaded her out on second trip, we made definite arrangements to take her off the n for about a month when she returned.
Q. That was the time she went out and returned from the voyage question?
A. Yes; and we ordered considerable steel, considerable material from steel manufacturers to do these anticipated repairs, and all preparations were made to start the repairs mediately upon the arrival of the vessel in Mobile about the 5th 6th of July, when repairs were started immediately after the sel got in from that voyage.
Among the repairs that were necessary was relocating the entire w's quarters, and the quarters of the passengers, and we found ecessary to put better crew's quarters on the vessel. We also had ensive boiler work to do on the vessel, and by doing this boiler k it was necessary to kill steam on the ship, and in view of the t that we were unable to keep steam on the vessel, and we were ble to have quarters for the crew to live, and to have our sanitary ap running to provide water to the bathrooms, it was decided to the entire crew off the vessel, because we had no way of taking of the crew on that ship while she was undergoing extensive airs.

Q. And the fact that some of the crew had joined the N. M. U. had nothing to do with tying up the boat?

A. The fact that the men changed to the N. M. U. had nothing to do with the tying up of the boat, and conceivably we were not going to tie up any vessel as long as we could earn money with her.

Q. Captain, as far as you are concerned, outside of the contract which you have with the I. S. U., is it material to you
566 what union a man belongs to?

A. No, sir; but understand we could not put any other man to work under the contract we signed, and when a company signs a document—it is not the policy of the Waterman Steamship Corporation to break or to violate contracts. We are too big a company to do that sort of thing, and we are not going to break any contracts with labor organizations.

Q. Now, Captain, in this paper, this contract on green paper, what we have identified as Respondent's Exhibit 14, I notice Article 8 thereof provides that it terminates December 31, 1936. Is that correct?

A. That is correct; yes, sir.

Q. Now, what else did you do on the "Bienville," did you do any re-bricking of the boilers?

A. We lifted the turbine casings for examination and did considerable work on our turbines; we did some boiler work. We altered the deep tank into a cargo hold; we converted the fore-peak storerooms into fuel oil tanks. We did certain repairs to the passenger quarters——

Q. Was there any scaling of the vessel?

A. We scaled all of the lower holds, scaled and painted all the lower holds of the vessel, scaled and painted to the deep line, deep load line of the vessel.

Q. Captain, while that was being done, did you or not use any of the N. M. U. men on the work?

567 A. Yes, sir.

Q. First, let me ask you. This particular contract with the I. S. U. only refers to the seamen and does not apply to men in your shops, is that correct?

A. That is correct.

Q. You are free to employ any N. M. U. men or anybody else at your shop?

A. That is correct.

Q. And in the employment of men to do this work on the "Bienville" at your shops, did you not use some of the N. M. U. men?

A. If I remember correctly, we employed a great many of the crew of the "Fairland" and the "Bienville" to work in our shops. I believe when we started the repairs on the "Bienville" we were working some 115 men, and we were working sixteen hours a day, and it may be some of the men worked three shifts, in fact, they

were working, there was work going on twenty-four hours a day in that vessel.

Q. Your shop is an open shop, is it not?

A. Yes. That work consists of skilled mechanics, and we used skilled mechanics and laborers.

Q. Now, did any of these N. M. U. men, to whom you gave work in the shops—were any of them discharged on account of their union affiliations?

A. Not to my knowledge.

Q. Well, you are in charge, aren't you?

568 A. I am in charge, but I am not directly in charge of the ships. The ships are under me, but I do not put a great deal of time in up around the ships, and the actual man in charge of the ships can testify.

Q. Who will we use on that?

A. Mr. Ingram was in charge, or Captain Reed.

Q. They know about it?

A. Yes, sir.

Q. Now, you heard the testimony of these witnesses in the last two days, did you not?

A. Yes.

Q. And you heard some of the men testify they were only given work for a week or two weeks and were then laid off?

A. Yes, sir.

Q. I will ask you whether the number of employees was decreased as the work ran out?

A. That is correct. We have a record of it here. According to our pay rolls, in our office, I find that here is one man from the "Fairland" worked in the shops——

Q. What is his name?

A. Gold, worked in the shops from July 8th to August 14th. Here is another man who worked in our shop——

Q. What is his name?

A. Eric Butcher. Eric Butcher worked from the 10th of July——

569 Trial Examiner Seagle. Does that record of yours indicate what they earned during that period?

The Witness. I can give you the records on what they earned, but my records here do not indicate it.

R. Bowen, the bo'sun of the "Fairland" worked in the shops from July 8th to August 4th. In fact, he worked in the shops after the "Bienville" proceeded to sea.

Benron is now employed on some other vessel in our firm.

Q. Was he one of the men who changed to the N. M. U.?

A. He changed to the N. M. U. and he is now working on some other vessel in the company.

Q. Did he have to go back to the I. S. U.?

A. We applied to the I. S. U. for a man and they sent us Benron.

Q. Is Benron now working?

A. He is now working, he is an able seaman on one of our vessels, the "Fairport."

Q. And he is one the men listed in the complaint?

A. Yes, sir.

F. Bodden, a member of the crew of the "Fairland," worked in the shops from July 8th to July 21st. He is now an able seaman on one of our vessels.

H. Hall, one of the crew of the "Fairland," worked in the shops for a period of six days, and he is now an oiler on one of our coastwise vessels out of the port of Mobile, which company has a contract with the International Seamen's Union.

570 R. Crawford, a member of the crew of the "Fairland," worked from July 9th to July 15th.

J. Dobbs worked in the shops. He was of the "Fairland" crew, and he worked from July 9th to July 17th.

Trial Examiner SEAGLE. I take it that neither Crawford nor Dobbs are now employed on any of your vessels.

The WITNESS. I could not say that without referring further to the records.

There are possibly about fifteen or twenty men named in the complaint who are now employed on board vessels.

Q. About half of them are now employed on our vessels?

A. Yes, sir.

Q. Captain, when you call on the I. S. U., do you place any restrictions on the men that they must send you?

A. No; they must send us qualified men, satisfactory to us.

Trial Examiner SEAGLE. Can you supply for the record exactly which of the men named in the complaint are now employed by you?

The WITNESS. Yes; but I doubt whether we can get it today.

(Discussion had off the record.)

Trial Examiner SEAGLE. I want merely a list of the men who are now working on vessels of the Waterman Line.

As I recall it now, you did enumerate names of men who signed those affidavits. Would they be the same men who have

571 been reemployed on other vessels, or would they be others?

(Discussion had off the record.)

Trial Examiner SEAGLE. Will you ascertain, then, exactly who they are?

The WITNESS. Yes, sir; but I cannot do it today.

Trial Examiner SEAGLE. By tomorrow?

The WITNESS. Yes, sir.

Trial Examiner SEAGLE. Another thing, while we are on the subject, I should also like you to supply information as to the earnings of the men who were employed in the shops during the period mentioned.

Q. Who else of these men, who joined the N. M. U., are still employed or retained in your open shop, where it is not in violation of your contract with the I. S. U.?

A. R. S. Kettlewell, from the 9th to the 15th of July.

Q. And he was on the "Fairland"?

A. Yes, sir.

Q. And you employed him in the shops after you knew he joined the N. M. U.?

A. Correct.

J. Stewart, from the "Fairland" worked in the shops, according to our records, from July 9th to the 15th.

C. E. Smith, of the "Fairland," worked in the shops from July 9th to the 16th.

Q. Now, Captain, at the time you gave these men jobs in the
572 shop, you knew all of them had joined the N. M. U.?

A. Yes, sir.

Q. But you were not prohibited from employing them in your shops?

A. Yes.

Q. Because your contract with the I. S. U. covered only the men going to sea?

A. Yes, sir; we have no contract with the I. S. U. covering the men employed in our shops.

Q. Captain, have you at any time discriminated against men belonging to the N. M. U., further than giving preference to the members of the I. S. U. under your contract?

A. No, sir.

Mr. Hoskins. I object to the question and ask that the answer be stricken. It is calling for a conclusion, and conclusions are properly found by the Board and not by the witness.

Mr. McCorvey. I asked him to give us what is required under the contract——

Trial Examiner Seagle. The objection is overruled.

Mr. Hoskins. Exception.

The Witness. No, sir; we have not.

Q. Captain, have you read all of those names off?

A. No, sir.

Q. All right, will you read them off?

573 A. The steamship "Bienville." B. H. Ingram, worked in the shops from July 12th to July 17th. I understand that Ingram is now employed in one of the vessels of the Waterman Steamship Corporation.

J. P. Hamilton worked in the shops from July 12th to July 14th.

Mr. McCorvey. Mr. Examiner, I will get that up in concrete form as to names and particular dates they worked and the amounts they were paid.

Trial Examiner Seagle. Yes; if you do that it will not be necessary to continue examination along this particular line.

Q. Captain, you heard a great deal of testimony relative to there being no vacancy on these vessels when these men came into port, and the "Bienville" was tied up for repairs and where the "Fairland"

came in and went on the drydocks. I wish you would explain, or state to the Examiner what is the custom and usage during all the years you have been engaged in maritime matters, regarding the termination of crews off a ship after a voyage?

A. In vessels like the "Bienville," where expensive repairs are done, it is customary to lay the entire crew off when sanitary conditions are such on board the boat where you could not properly feed or house your crew.

574 Two or three days before the completion of the repairs, the delegate of the International Seamen's Union comes down to the vessel and interviews the mate and the engineer and finds out what crew is needed, or else the mate or the first engineer, first assistant engineer will call up the union hall and tell them what crew is needed. The crew, then, are examined by a doctor to see if they are medically fit, and they are given a note to the mate or the first assistant, or the steward's department, or whatever department they may be in, and they are allowed to go to work on the ship.

Q. You heard the testimony of some of these N. M. U. men to the effect that there was no termination of employment when the vessel came in and they signed off. How about that?

A. Their employment was terminated immediately upon signing off, because we had no place to house the crew, and repairs were so extensive on the ship, working twenty-four hours a day, that it would have been impossible to have kept the crew by the ship.

Q. Then, when you got the vessel ready to go out again, there were vacancies to be filled?

A. When the vessel got ready to go out, you see, there were vacancies to be filled and the National Seamen's Union were notified, in accordance with our contract, on the certain number to be filled, and they, in turn, filled them with men of good standing, and the vessel proceeded to sea.

Q. What about the "Fairland" going to drydock?

575 A. Every eight or nine months, every nine months, rather, vessels of the Porto Rican trade are put on the drydock.

Q. Why do you do that?

A. To clean and paint them and do any bottom work, or any rudder work, work on the propeller, or any other work that is necessary.

Q. While that work is being done, have you anything for the crew?

A. At times we have and at times we have not.

Q. And in the case of the "Fairland" did you have any work for the crew?

A. In the case of the "Fairland" she arrived here during the holidays, if I remember correctly——

Q. Which holiday?

A. The Fourth of July holiday, and we killed the vessel, shut off the steam, and while the vessel was in port we elected to lay the crew off.

Q. Was there any arrangement to put this vessel in drydock before she left Mobile?

A. It was arranged beforehand, some three or four months before that we would clean and paint her.

Q. Before she left Mobile?

A. Before she left Mobile on her outbound voyage.

Q. The fact that when she got to Tampa and some of the members joined the N. M. U., did not have anything to do with her
576 being taken to drydock?

A. No, sir.

Q. It had been arranged before then?

A. Yes, in fact, in the case of the "Fairland" only a portion of the crew joined the N. M. U. and the entire crew was laid off.

Q. You laid off I. S. U. men?

A. We laid off I. S. U. men along with N. M. U. men, and when the vessel was ready to go to sea again the I. S. U. was notified, and they, in turn, put new men, a new crew on board, and if I remember correctly, I don't think they put the I. S. U. men on who left the ship, but I will have to check my records to say.

Q. All the men, the I. S. U. and the N. M. U. men were laid off?

A. Yes, sir.

Q. And, under your contract, when you got ready to ship the "Fairland," you called the I. S. U.?

A. We called the I. S. U. and the I. S. U. in turn furnished us a competent crew, and I believe some of the men they furnished are still by the vessel, because the vessel has operated continuously since that time and had no layoffs.

Q. Captain, do you know of your own knowledge anything Mr. C. J. O'Connor, and his leaving or discharge?

A. No, I don't know much about that. O'Connor has worked for us off and on. He never worked for us for any great length of time at once. He has been working on our ships for a number of
577 years, but I am not familiar with the facts, and—I am not familiar with the facts in Mr. O'Connor's case at all. I understood he laid off and has never applied to us for reemployment, but I believe Mr. Ingram is in a better position to answer that.

Q. Well, was his employment terminated, and was he refused reinstatement for the reason that he had joined and assisted a labor organization known as the M. E. B. A.?

Mr. Hoskins. If it please the Trial Examiner, I don't see how, in view or the witness' previous answer, he is in a position to answer that question.

Trial Examiner Seagle. Do I understand you don't know much about Mr. O'Connor's case?

The Witness. No sir; that is correct.

Trial Examiner Seagle. Then, you would not be in position to answer that question.

The Witness. All I know about him is from hearsay.

Q. Were reports made to you?

A. Yes, sir.

Q. In view of that, I will ask you if the employment of Mr. O'Connor was terminated and he refused reinstatement for the reason that he joined and assisted a labor organization known as the M. E. B. A.?

A. No, sir.

Mr. Hoskins. I make the same objection and I ask that the answer be stricken.

578 Trial Examiner Seagle. I think the proper question would be whether he received any reports to that effect.

Q. Did you receive reports to that effect from any of your men?

A. No, sir.

Mr. Hoskins. I move that the answer be stricken.

Trial examiner Seagle. The answer to the previous question will be stricken and the answer to the last question will stand.

Q. Captain, there was no way that you could have reemployed the men on the "Bienville" and the "Fairland," without violating the contract you have just testified about, is there?

A. We could have reemployed them if the International Seamen's Union here, with whom we have a contract, would send them back to the vessel.

Q. To give them preference?

A. To give them preference. We call up the International Seamen's Union for a crew, and had the International Seamen's Union sent these men we would have taken them back.

Q. Captain, I think you testified a moment ago that on both of these vessels, the "Bienville" and the "Fairland," the men were employed for a certain voyage, and they were permitted to complete the voyage even though some of them had joined the N. M. U., is that right?

A. That is correct.

579 Q. None of them were put off the ship because they joined the N. M. U., were they?

A. No, sir.

Q. Did you ever terminate the employment of any of these men, or did their employment terminate when the time expired?

A. Yes.

Q. How is that?

A. We terminated their employment at the time their contract was up.

Q. That was when the voyage ended and they were checked off?

A. Yes, sir.

Q. Now, captain, did the fact that these employees, or some of them, engaged in concerted activities with other employees for the purpose of collective bargaining with respect to rates of pay, and so forth, have anything whatever to do with the termination of their employment?

A. No, sir.

Q. Even after you knew they joined the N. M. U., you still permitted them to stay on board the ship until their voyage was over?

A. Correct.

Q. Captain, have you, or has any officer, or anyone representing your company, so far as you know, at any time tried to persuade any of the seamen to join one union or another?

A. No, sir, we have not.

580 Q. Have you or any officer of the Waterman Steamship Corporation, or anyone acting for it, to your knowledge at any time tried to interfere with the men on the ships, or restrain them, or coerce them in any manner as to what union they should belong to?

A. No, sir.

Mr. HOSKINS. I object to those questions, they are all conclusions of law.

Trial Examiner SEAGLE. Overruled.

Q. Now, Captain Nicolson, I will ask you this: Has it been entirely immaterial to your company, as to what unions or societies or organizations, your seamen belong to, so long as you do not violate your contract?

A. No, sir, provided we do not break our contract with the International Seamen's Union, which has given us proof that they were the collective bargaining agency for the majority of our seamen.

Mr. LUSTIG. I object to the last part of the reply—"Has given them proof"——

Trial Examiner SEAGLE. Objection overruled.

Q. Now, you heard Mr. O'Connor's testimony, I think, have you not?

A. Yes, sir.

Q. And your vessels, I believe, he testified that the M. E. B. A., members of the M. E. B. A., were engineers on your vessels?

581 A. Several years ago we entered into an agreement with the Marine Engineers Beneficial Association.

Q. And you have lived up to that agreement?

A. We have lived up to our agreement and the Marine Engineers Beneficial Association has lived up to their agreement, and our relations have been very pleasant.

Q. Every engineer you have is a member of that organization?

A. Our engineers are one hundred percent organized; that is, every engineer in our employ is a member of the Marine Engineers Beneficial Association.

Q. And you have never discriminated against anyone because they have belonged to it?

A. We have never discriminated against anyone whether they did or did not belong, and our contract was made with the M. E. B. A. during peace times and not during any strikes. As soon as they proved that they represented a majority of our engineers, we immediately met them as the collective bargaining agency for our men and made a contract with them in accordance with the Wagner Act.

Q. Now, when a boat goes on drydock, take the "Fairland" that you testified about, sometimes there is work to be done by the crew in drydock, and other times there isn't any work to be done; is that correct?

A. That is correct. A vessel arriving in port for layup has no set rule as to how she is to be handled in regard to crews,
582 and it is all based on the condition of the vessel, the finances of the company that owns the vessel, the ability of the vessel to make a profit, and we have, at times, brought a vessel in from Europe and laid her up and laid off the crew after three or four hours after the vessel's arrival in port: we laid that crew off for two weeks or three weeks, and there have been times, during bad times, when we laid ship's crews off for as short period as three or four days, and at times we would employ the full crew for three or four weeks when we found that we could repair the vessel more economically with the ship's crew than we could with shore labor.

Q. Now, Captain, has your company, the Waterman Steamship Corporation, or you, or anyone to your knowledge, at any time, tried to prevent your employees from self-organization?

A. No, sir.

Q. Have you ever, at any time, tried to prevent the members of your crews from forming an association or a society, or organization, to bargain collectively through representatives of their own choosing?

A. No, sir.

Q. Have you ever at any time tried to interfere with, restrain, or coerce your employees?

A. No, sir. I might add that the Waterman Steamship Corporation is the only steamship company in the United States that has not had a delayed sailing of their vessels, or had any trouble within their vessels during the past three years.

583 Everyone of the Waterman Steamship Company vessels on sailing schedule went out with first class, competent crews on the boat, they being the only shipping company in the United States who can boast of that record.

Q. And they are all union crews, are they not?

A. They are all union crews.

Q. Captain, referring to these men once more, referring to the shop work, the work in the shop, like you did on the "Bienville," do you require a good many men?

A. Yes; in our shops, Mr. McCorvey, at times we work as few as twenty men, and we would have, sometimes, as many as five hundred men in the shop. Our shop work is based on the number of jobs we have to do on the ships, and how many ships we have in port. We have to employ many men to overhaul the ships in port, and the more ships in port, the more men we work. Every morning, possibly, two hundred men, of their own accord, will come up to our shops seeking employment, and we would like to hire every one of them if we can, but we cannot, so we hire as many as we possibly can.

Q. In hiring them do you make any distinctions as to what union they belong to?

A. No, sir; we do hire them on a seniority basis, that is, a man working in our shops four or five years is going to be given pref-

erence in work over a man who has only been working there four or five months.

584 Q. Getting back to the time when the "Bienville" came in and tied up. The first week or two there were a great many more men at work on her, weren't there?

A. It is our system and custom, when a vessel first arrives, to put as many men on that ship as possible, and then cut down the men as the job nears completion, and in the case of the "Bienville," we started with a large amount of men, and then after the work went along, we cut it down until we only had a few men working by the time the repairs were completed. That is good shipyard practice; that is universally good shipyard practice as well as the practice that we use in our shops.

Q. So that there was nothing unusual in the way the "Bienville" was handled, insofar as the number of men was concerned?

A. Yes.

Q. In other words, the amount of men that worked on her was cut down from day to day?

A. Yes.

Q. Now, you could not work them when the work was not there to be done, could you?

A. No, sir.

Q. Now, about this proposition of passes. I believe your contract, which was admitted in evidence provided that the union's representatives, in Section 3 of Article 2, it is provided: "The authorized representatives of the union shall have the right to go on board

585 ships covered by this agreement subject to regulations prescribed by the owners, for the purpose of consulting with seamen employed thereon," and section 4 requires that, "The International Seamen's Union shall take out insurance which will protect the steamship owner, agent, charterer, operator, and subsidiary or affiliated companies against any claim, loss, damage, or liability for loss of life or injury, occurring to a representative of the said unions while on the property or while on board a vessel or any of the above-mentioned," and so forth.

Did you give passes to the I. S. U. in pursuance of that article, forbidding them to go on board of your ships?

A. Yes.

Q. As provided in your contract?

A. Yes, sir.

Q. Did you make any regulations, however, as provided in Section 3, that the authorized representatives shall have that right, subject to the regulations prescribed by the owner?

A. Yes, sir.

Q. Did you have any regulations as to what these men should do aboard ship?

A. When we made our original agreement, I believe we permitted the delegates or agents to go aboard the ships between the hours of twelve to one, five to six, and seven-thirty to eight in the morning,

and during the time the ship was signing on and paying off,
586 and those passes remained in effect until July 1937, at which time we instructed the International Seamen's Union that they could not go on board our vessels for the purpose of soliciting membership, and we notified the International Seamen's Union in writing and we notified all of our masters in writing.

Trial Examiner SEAGLE. When was this notification?

The WITNESS. In July 1937.

Trial Examiner SEAGLE. What part of July?

Mr. MCCORVEY. I have the letter. We are going to introduce the letter.

Q. Now, I have here in my hand a paper which you gave me, signed by you and addressed "To all masters," with copies to Captain Reed and Mr. Ingram, dated July 13th, 1937, reading as follows:

"In view of the fact that the National Labor Relations Board are now holding elections to determine whether the N. M. U. or the I. S. U. should represent the unlicensed members of our crews in collective bargaining, we have decided that we will not allow any delegates from either union to board our vessels for the purpose of soliciting memberships." Is that the order you gave to your Captains?

A. Yes, sir.

Q. Captain, was that carried out, to the best of your knowledge?

587 A. It was carried out to the best of my knowledge.

Q. And is that a true and correct copy of the letter which you gave to all masters?

A. Yes.

Mr. MCCORVEY. I would like to introduce that letter, which I read in evidence.

Mr. HOSKINS. No objection.

Trial Examiner SEAGLE. The letter will be admitted in evidence as Respondent's Exhibit 16.

(Whereupon the document above referred to was received in evidence and marked "Respondent's Exhibit No. 16.")

Q. Captain, did you about the same time, on July 12th, 1937, did you address to Mr. William Ross, Agent, International Seamen's Union, in Mobile, Alabama, copies of which were sent to Captain Reed and to Mr. Ingram, a letter reading as follows:

"In view of the fact that the National Labor Relations Board is now holding an election to determine whether the N. M. U. or the I. S. U. should represent the unlicensed personnel of our vessels at collective bargaining, we have decided that until the election is held we will not allow members from the N. M. U. or your organization on board our vessels for the purpose of soliciting memberships."

Did you write that letter to Mr. Ross?

A. Yes, sir.

Mr. MCCORVEY. We would like to offer that in evidence,
588 that letter identified by the witness.

Mr. HOSKINS. No objection, except that I note that it is only a rbon copy.

Mr. MCCORVEY. Yes; we naturally would not have the original.

Trial Examiner SEAGLE. The copy of the letter dated July 12th, 937, addressed by the Waterman Steamship Corporation, to Mr. 'illiam Ross, will be admitted as Respondent's Exhibit 17.

(Thereupon, the document above referred to was received in idence and marked "Respondent's Exhibit No. 17.")

Q. Now, Captain, I will ask you if you received a reply from r. Ross to that letter, the reply being a letter which I now hold my hand, written on the stationery of the International Seamen's nion of America, affiliated with the A. F. of L., Mobile Branch, South Conception St., reading as follows:

"JULY 14TH, 1937.

aptain N. NICOLSON,

Executive Vice-President, Waterman Steamship Corporation,

"Merchants National Bank Building, Mobile, Alabama.

"DEAR SIR: This will acknowledge the receipt of your letter 9 dated July 12th, 1937.

"In reply I would state that passes issued to the agents and legates of the International Seamen's Union of America have t been used for the purpose of soliciting memberships. Our agents d delegates board ships only in line with their duties to contact mbers of the International Seamen's Union of America, collect es, and attend to matters relative to the work and agreements isting.

"The election to be held under the National Labor Relations Board pervision does not in any way affect the agreements in force tween the steamship companies and the International Seamen's nion of America."

Did you receive that letter from Mr. Ross?

A. I received this letter from Mr. Ross.

Mr. MCCORVEY. We offer that letter in evidence, the letter just ntified by the witness.

Mr. HOSKINS. No objection.

Trial Examiner SEAGLE. The letter addressed by William Ross, ent of the International Seamen's Union of America to Captain Nicholson, under date of July 14th, 1937, will be admitted as pondent's Exhibit 18.

Thereupon, the document above preferred to was received in lence and marked "Respondent's Exhibit No. 18.")

Q. Captain Nicolson, you heard Mr. Hoskins, I believe, it was, read certain extracts from a ruling made by the National Labor Relations Board in case No. R-157, on September 11, , August 16, 1937, and July 16, 1937, in which it was held that ther union was to be permitted on board, both unions were to ermitted on board. Did you not?

Yes, sir.

Q. And these orders which you gave were prior to that time, were they not, prior to the date that ruling was made?

A. I don't know when that ruling was made.

Q. But they are the correct dates, shown on those letters?

A. Yes, sir.

Q. And so far as permitting men on board your ships to solicit memberships, you treated both unions alike?

A. Correct, and I want to add—may I add something?

Q. Yes.

A. Early in May of 19—the first of the year, we purchased a vessel called the "New Yorker," owned by the State Steamship Company of Portland, Oregon. We shipped a full crew on that vessel, and brought the vessel from Portland, Oregon, to Mobile, by way of New York, and North Atlantic ports, and the vessel proceeded with a full cargo of grain from Portland, Oregon, to New York, and in New York half the crew left and we repatriated them back to Portland.

Q. What do you mean by that?

591 A. Sent them back by train, paid their way back, and half of the new crew was engaged in New York. That crew that was engaged in New York took the vessel from New York to Canada, from Canada to England, England back to Canada, and Canada back to New York, when more of the West Coast crew left the vessel, and we sent them back to Portland, and replacements were hired in New York.

The vessel then proceeded from New York to Mobile, and when she arrived in Mobile we found that the entire crew were members of the N. M. U.

The N. M. U. delegate in Mobile at that time, and the steward's delegate came on the docks and asked me if he could go on board the vessel; that the majority of the crew on that vessel were members of his organization. I said, "Yes; you can go on board the vessel, provided the majority of the members of that crew are members of your organization," and we let him go on board the vessel for the purpose of collecting dues and gave him the same privilege on that vessel as the I. S. U. had on vessels where they had a majority of the membership.

Mr. HOSKINS. What vessel was this?

The WITNESS. Her name was the "New Yorker"; she is now called the "Pan-Kraft."

Mr. HOSKINS. And when was this?

The WITNESS. That was in April or in May—we sailed her on July 3rd for South Africa. That was in the first part of June of

592 1937; it was right during the time we were having, or shortly after we had the trouble on the "Bienville."

The crew of that vessel was paid off, due to the fact that we put her in for repairs, in the same manner as we did the "Bienville," and that particular crew was repatriated to New York and signed articles and were discharged, and we had nothing further for them, they were discharged because the voyage had terminated and not because of any

union membership, and we permitted the delegates from that union to come on board the ship.

Q. In other words, your practice is to let the men decide whatever they want to do, so long as you do not violate your contract with the I. S. U.?

A. Yes.

Q. And when these men went on these ships, in both instances, the "Bienville" and the "Fairland," the I. S. U. was the bargaining agency; is that right?

A. Yes.

Q. Captain, about this election proposition, have you done anything towards holding elections?

A. No, sir; the National Labor Relations Board said they wanted to hold elections on our vessels, and I told them to go ahead and hold them; it is up to them. I don't know whether they held elections or not. Our ships are operating satisfactorily with contented crews on board.

Q. You don't permit the I. S. U. men to come on there and
593 hold elections do you?

A. No, sir.

Q. Now, Captain, I don't remember if I asked you about this business of prompt reshipment, and so on, whether I asked you to explain just what the practice was when a vessel usually came in, would unload the cargo and go right out, go right out on prompt reshipment. What is the custom of giving preference to the old crew?

A. The majority of our vessels are giving quick turn-arounds.

Q. What do you mean by quick turn-arounds?

A. Two or three days in the port of Mobile, and we keep them going, keep them pretty busy until we lay them up for repairs.

Q. You mean you can unload the vessel and load it in two or three days?

A. That is what we do in the port of Mobile. Of course, we go to other ports. The vessel "Antinous" arrived in Mobile Monday morning; Monday afternoon we paid the crew off and immediately resigned a crew on. That is what I call prompt reshipment.

Q. Captain, you heard one of these fellows say he did not know what is meant by the home port of a vessel. Will you define that for us?

A. Yes, the home port of a vessel is where the permanent documents of a vessel are. That is fixed by statute.

Trial Examiner Seagle. Did you, in such cases, reemploy
594 the crew, irrespective of their union membership?

The Witness. We never ask a man what he belongs to. The crew completes the voyage and we sign them off, pay them off, and we don't care what union he belongs to. We do have a contract with the International Seamen's Union to furnish us men, as vacancies occur, and if any man left that vessel, we would call up the International Seamen's Union and they, in turn, will furnish us with the replacements, but, when we sign off a crew, and if that new crew is

going right out, if it is prompt reshipment, no one from the Waterman Steamship Corporation, nor the master of the vessel, asks them what union they belong to.

Trial Examiner SEAGLE. And it is your understanding that under your contract you are permitted to do that?

The WITNESS. Well, I know that our vessels, when they leave port, the men are one hundred per cent I. S. U., because when the vessels arrive, the I. S. U. men go on board for the purpose of collecting dues.

Trial Examiner SEAGLE. Well, apparently, in some cases, judging by your testimony here, they changed their union affiliations during the voyages.

Q. Captain, this business of changing from the I. S. U. to the N. M. U., has never happened on any boat, on any of your vessels, except the "Bienville" and the "Fairland"?

A. Those are the only two vessels I know of where the crew
5941/2 changed from I. S. U. to N. M. U.

Q. Captain, I believe I asked you if you, at any time, attempted to discourage membership of your employees in any maritime union?

A. No, sir.

Q. And it is true that you refused to grant passes to anybody, except under this contract requirement, to the I. S. U.?

A. That is correct.

Q. And that you have limited those passes to the regulations which you authorized under the contract, which you testified about?

A. That's correct.

Mr. McCORVEY. I believe that is all, Captain.

Trial Examiner SEAGLE. It is now after 5:00 o'clock, and I believe the Captain has promised to produce some additional data tomorrow. Perhaps we better adjourn now and resume tomorrow morning.

Mr. HOSKINS. Do I understand that the direct examination is over?

Mr. McCORVEY. My direct examination of the Captain is.

Trial Examiner SEAGLE. You mean with the exception of the data which he will bring in?

Mr. McCORVEY. It may be, in going over the notes I made of the direct examination, I may have one or two additional questions.

595 Trial Examiner SEAGLE. I wonder if you can produce for me figures showing the number of men who have been employed in your shops from July 1st to August 15th, 1937. I would like to know the number of men employed on each day during that period.

We will now recess until 9:30 o'clock tomorrow morning.

(Whereupon, at 5:10 o'clock p. m. November 3, 1937, the hearing was adjourned to 9:30 o'clock a. m., November 4, 1937.)

603 Before the National Labor Relations Board, Fifteenth Region

Case No. XV–C–75

[Title omitted.]

FEDERAL BUILDING,
Mobile, Alabama, November 4, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock a. m.

Before WILLIAM SEAGLE, Trial Examiner.

Appearances: Joseph A. Hoskins and Berdon M. Bell, attorneys on behalf of the National Labor Relations Board. Stevens, McCorvey, McLeod, Goode, Turner, Merchants Bank Building, Mobile, Alabama, by Gessner T. McCorvey and C. A. L. Johnstone, Jr., on behalf of the Respondents. William L. Standard, 291 Broadway, New York City, by Max Lustig of counsel, on behalf of the National Maritime Union of America. Alex Howard, 415 Van Antwerp Building, Mobile, Alabama, on behalf of the Seamen's Reorganization Committee of American Federation of Labor.

604 PROCEEDINGS

Trial Examiner SEAGLE. The hearing will come to order.

NORMAN NICOLSON resumed the stand, having been previously sworn, was examined and testified further as follows:

Direct examination by Mr. McCORVEY:

Q. Captain, there wasn't anything else that you thought of last night that you want to add to your testimony?

A. I don't think so.

Mr. McCORVEY. Mr. Examiner, Mr. Ingram reports that the date you requested is being typewritten in their office now.

Trial Examiner SEAGLE. Very well. Cross-examine, Mr. Hoskins.

Cross-examination by Mr. HOSKINS:

Q. Captain Nicolson, you are the executive vice president of the Waterman Steamship Corporation?

A. Yes, sir.

Q. And as such you testified here yesterday; is that not right?

A. Yes, sir.

Q. How long have you been the executive vice president of that corporation?

A. About two years, I should say.

605 Q. About two years?

A. A year and a half or two years.

Q. That is, you have held this office of executive vice president——

A. I have held the office of the executive vice president since the retirement of our late president. I guess that is about a year since

I have been the executive vice president. I don't remember the exact date.

Q. In the answer filed by the Waterman Steamship Corporation, the affidavit of H. C. Slaton says, in part:

"I have charge of the minute book and records of said corporation and the Board of Directors of said corporation, at a meeting held October 19th, 1937, duly called and held at the offices of said corporation at Mobile, Alabama, elected Captain N. G. Nicolson executive vice president of the corporation."

A. That was the second time I was elected. The officers of our corporation are elected year by year, and our annual meeting of our stockholders and directors is held in the first week in November of each year.

Q. You and all the officers are elected each year?

A. All the officers are elected each year, year by year, and that was reelection.

Q. I believe you stated you have been at Waterman's for 19 years; is that correct?

606 A. I have been with the Waterman Steamship Corporation from the time they started business, which is between 18 and 19 years.

Q. And during your course at sea, you came all the way from an ordinary seaman to the executive vice-presidency?

A. Yes, sir.

Q. And have held various jobs and ratings all the way up; is that right?

A. Yes, sir.

Q. Captain Nicolson, I believe you stated that you negotiated the contract with the I. S. U. on behalf of the Waterman Steamship Corporation?

A. Yes, sir.

Q. And I believe you made the statement that the reason you negotiated that contract was because the I. S. U. presented you with evidence that they had a majority; in fact, that they had 80 percent of the employees of your steamship line; that is, your seamen?

A. I don't think they showed me that they had 80 percent, but that was my opinion that they had 80 percent of the members at that time.

Q. Did they show you that they had a majority?

A. I believe they did.

Q. I would like you to be a little more specific on that, Captain, you say you believe they did. Did they or did they

607 not?

A. They did; yes, sir.

Q. What evidence did they show you to convince you that they had more than 50 percent of the seamen on your vessels; that is, the unlicensed personnel?

A. Just from the attitude of the men. The men wanted an organization, and at the time the International Seamen's Union was reor-

ganized in 1934 we issued passes for them to go on board the vessels, and we knew that some of the members of our crew supported the International Seamen's Union in Mobile right from 1921 up to 1935, when they reorganized.

Q. I am asking you specifically how you knew, on March 19, 1936, that the I. S. U. represented a majority of your unlicensed personnel?

A. In March 1936 we made our second or third agreement with them.

Q. But the agreement that has been introduced in evidence was executed in March 1936; is that not correct?

A. That is correct.

Q. Well, again I will ask my question. How did you know that at that time the I. S. U. represented the majority of your unlicensed personnel?

A. Because on that day we were doing all of our shipping through the I. S. U. Hall, and a man to get on board our vessels, or a job on our vessels, had to come through the I. S. U. Hall.

608 Q. Did you know at that time how many of your personnel were I. S. U. members?

A. In March 1936, on account of the system of hiring them, our men was 100 percent I. S. U.

Q. Didn't you state just a moment ago that you thought they were 80 percent at that time?

A. I was talking of 1935 when we contracted or made our original agreement with the I. S. U.

Q. In what part of 1935 did you make that original agreement?

A. Shortly after the International Seamen's Union was organized.

Q. When; about what month, Captain?

A. March or April.

Q. You made a new agreement in March 1936?

A. Correct; yes.

Q. Is it not a fact that in March 1936 the I. S. U. did not present you with any records showing how many of your men belonged to the I. S. U.?

A. That is correct; it was not necessary, because we were shipping through the Hall for about a year then.

Q. Well, is it not a fact that you had no records in your company showing how many men belonged to the I. S. U.?

A. That is correct; yes, sir.

609 Q. In other words, your knowledge was your assumption that the I. S. U. had a majority of the unlicensed personnel at the time you entered into the contract, which is here in evidence, and is based purely on your own, well, on your own assumption, although that is using the same word twice, that the I. S. U. had more than a majority of your unlicensed personnel?

A. You are talking to March 1936, now?

Q. Speaking of March 1936, when the contract here in evidence was executed by the company and by the Union?

A. In March 1936, the I. S. U., for over a year, was furnishing all the unlicensed members of our crew through the I. S. U. Hall. All vessels sailing, after we made our original contract in 1935, were furnished crews through the I. S. U. Hall, and due to the fact that we had some 100 sailings from the time we entered our original contract, we made a new agreement in March 1936, and the I. S. U. furnished crews for all of those vessels, and I assumed that the I. S. U. certainly would not put crews on our boats, our vessels, who were not members in good standing.

Q. But it still remains a fact, does it not, that you made no independent check to determine whether or not your crews were I. S. U. members?

A. It was not necessary.

Q. I am asking you whether you did?

A. No, sir; I did not.

Q. How long a period, in your opinion, did it take to change
610 from the 80 per cent to 100 per cent?

A. A matter of—as each ship came in after our original agreement.

Q. How long a period of time is that?

A. Not over 90 days.

Q. Now, your original agreement was similar, somewhat in the same terms as this pre[illegible] agreement?

A. Very similar.

Q. Then, in other words, you had a 20 per cent change in your personnel in 90 days; is that correct?

A. No; we did not. At the time we entered into the original agreement with the I. S. U., it was not long after that that whole crews joined the I. S. U.

Q. But you did have a 20 per cent increase, in your opinion, in the I. S. U. membership on your fleet in 90 days?

A. Yes.

Trial Examiner SEAGLE. How did you calculate the original figure of 80 or 85 per cent?

The WITNESS. Just by the men who were sailing and the interest they were taking in the union. The I. S. U. has been in existence in the Port of Mobile for a period of 20 years or more.

Trial Examiner SEAGLE. I know, but percentage is a very definite figure. You had no specific information?

The WITNESS. I had no specific information.

611 Trial Examiner SEAGLE. You mean, really, that it was just your opinion that it was 80 per cent in 1936?

The WITNESS. Yes, sir.

Q. Captain Nicolson, what is the normal percentage of turn-over on your ships, among the unlicensed personnel?

A. We have had vessels coming into the Port of Mobile——

Q. I am not asking you on any specific vessel, I am asking you the normal rate for your entire fleet.

A. On our Trans-Atlantic vessels the normal turn-over in the deck department is about 60 per cent.

Q. Is that a year?

A. 60 per cent a voyage.

Q. You mean that 60 per cent of the personnel——

A. (Interrupting.) Of the deck department.

Q. Of the deck department voluntarily resigns?

A. Voluntarily resigns.

Q. Or is discharged for good and sufficient cause?

A. Yes.

Q. On each voyage?

A. On each voyage, on the European trips.

Trial Examiner SEAGLE. What is included in the deck department?

The WITNESS. A bosun, six A. B.'s, and three ordinaries, a total of ten men.

Trial Examiner SEAGLE. Are they all unlicensed men?

612 The WITNESS. All unlicensed men.

In our engine rooms the normal turn-over is about 20 per cent.

Q. That is without the licensed officers?

A. Without the licensed officers.

Q. Is that also on your Trans-Atlantic?

A. In our Tra's-Atlantic.

In our Steward's department, I would say that our turn-over is about 40 per cent. It is not unusual for a vessel to come in with only one or two men left, and it is not unusual for the whole crew to leave.

Q. How about your other runs, Captain?

A. In our Porto Rican runs, they are short trips and the turn-over is a little less in the Porto Rican run than it is in the Trans-Atlantic.

Q. Will you give us the figures in that department, as you have on the Trans-Atlantic run?

A. The turn-over in our steward's department in our Porto Rican run is very small. During the Winter months, the turn-over in our engine rooms is very small. During the Summer months, during hot weather in Porto Rica, I should say our engine rooms turn-over is about 50 per cent; in our deck department the turn-over is 50 per cent on the Porto Rican vessels, but the Porto Rican vessels carry very small crews, though.

613 Q. How about the Steward's department?

A. The Steward's department, I have stated, was very small.

Q. What is the figure, Captain?

A. I have answered that.

Q. I don't think you have. I asked you for a figure. Very small is not a figure.

Trial Examiner SEAGLE. In terms of percentage, what is it?

The WITNESS. 15 to 20 per cent. I am giving all this, now, from memory. The figures are very approximate, and to give you the exact figures, it would be necessary for me to consult our records.

Q. That is all right; I asked you for your best judgment on it. Now, what is the total, average number of—total, average number of seamen, unlicensed personnel, in the employ of the Waterman Steamship Corporation?

A. 650 to 700 men working at all times, and then, with the ordinary turn-over, I should say there is approximately 850 or 900 seamen, depending on the Waterman Steamship Corporation for their livelihood. That is men at sea and men on shore.

Trial Examiner SEAGLE. You mean that includes those who do shore work?

The WITNESS. No; that includes men who get one vessel and
614 stay ashore for a couple of weeks, and then ship out on another one.

Q. Can you give us an approximation of how often you have a complete turn-over?

A. No; I don't think I could. Some of our men have been in the same ships for six or seven years.

Q. I realize that too, but how often will it take to get 700 new names on your pay rolls?

A. That would be an indefinite period, because a man comes in and gets one vessel and goes out, and then quits and goes out on the next one two or three weeks later.

Q. Well, that is turn-over as to him.

A. But it would not be a new name in our pay roll.

Q. Well, that is a continuing employee.

A. That is pretty hard to determine. I could not answer that unless I reviewed my records.

Q. Captain, how many boats has the Waterman Steamship Corporation operating now? I don't mean as of today, but in this period.

A. We have been adding to our fleet recently. We purchased a couple of vessels a week or so ago. We have, without reviewing my records, due to recent sales and purchases, I think the Waterman Steamship Corporation today owns 24 or 25 vessels.

Q. Do you operate any vessels that you do not own—I mean you are not distinguishing between owning and operating?

615 A. Yes, sir. At times we have had time charter vessels, have had as many as 16 vessels on time charter.

Q. In addition to those 24, have you any time charter vessels now?

A. We have a couple of foreign vessels on time charter, but on time charter vessels we do not furnish the crews. The owner of the ship furnishes the crews.

Q. You operate, you say, 24 vessels, and on those you employ about six or seven hundred men, is that correct?

A. That is correct.

Q. And about how many sailings are made a year in the aggregate on your vessels, restricting your answer, again, to these 24?

A. I should say we have about 130 sailings a year out of the Port of Mobile. We have some sailings that never come to Mobile. We operate a service from Canada to England and we have vessels of our own out on charter in other trades, but out of the Port of Mobile we have about 130 sailings a year to Porto Rico and Trans-Atlantic ports.

Q. Those are all in foreign service?

A. Foreign and Porto Rico; Porto Rico has a consular office. It is recognized by the customs as foreign, I believe.

Q. Now, referring back to this contract for a moment, I believe you stated you had no definite records or statistics at the time
616 you signed this contract in March 1936, actually showing that the I. S. U. had 51 percent of your unlicensed personnel. Is that not right?

A. Except that the I. S. U. had been furnishing us crews.

Q. No, I am asking you, Captain, if you had records or statistics, as distinguished from your judgment?

A. We had no records, but I do know, from my knowledge, that the I. S. U. was furnishing us crews for over a year.

Q. I will ask that you restrict your answers to my questions, please.

Mr. McCorvey. Written records, is that what you mean?

Mr. Hoskins. I don't know of any other type of records.

The Witness. I had no records, but we had personal knowledge.

Q. You had no records?

A. We had no records, but I had personal knowledge.

Q. Do you maintain records at the present time?

A. We do not maintain records of what labor organizations any personnel in our employ belongs to.

Q. In other words, you do not maintain records to show that the I. S. U. has a continuing percentage, 51 percent, of your unlicensed personnel, is that correct?

A. We have complete records of the entire personnel in our ships.

Q. Do you keep records showing what unions they belong to?

A. No, sir; because we are not interested in what unions
617 they belong to.

Q. Then, you don't know, from time to time, whether the I. S. U. has 51 percent of your personnel, do you?

A. We have no particular personal knowledge, but they have been furnishing our crews for four and a half years.

Q. Captain, will you restrict your answers to my question? Do you have any records to show?

A. We have no records, but I have personal knowledge.

Q. You rely on your knowledge?

A. I rely on my personal knowledge on account of shipping through the Union hall.

Q. Captain, you say that you do know because you have been shipping through the Union hall, the I. S. U. Union hall, is that correct?

A. That is correct; yes, sir.

Q. Now, you have this contract with the I. S. U., and I believe that that is called a preferential contract, is that not right?

A. I don't know what it is called, it is a contract with the I. S. U.

Q. Providing for preference of employment?

A. Correct.

Q. Do you recognize the distinction between a closed-shop contract and a preferential contract?

A. Yes.

618 Q. What is the difference?

A. A closed shop contract says you have to take men belonging to one organization, and an open shop contract is to have a contract with the union under certain rules, wages, and working conditions, and forbidding anyone from the outside to work in that shop.

Q. I asked you, though, about a closed shop and a preferential contract, not closed and open shops.

A. And that is what I am answering.

Q. You are interpreting open shop the same preferential?

A. No, sir; I am not; I am; I should interpret a preferential agreement as pretty near a closed shop agreement.

Q. Do you know of any provision in this contract which requires you to hire your men through the I. S. U. Hall?

A. Yes, sir.

Q. Will you point out the provision to me, Captain?

A. Article 2, Section 1. "It is understood and agreed that, as vacancies occur, members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment."

Q. And do you interpret that, then, to mean that you have got to go to the I. S. U. Hall to get your men?

A. Yes, sir.

Q. Rather than following the mere wording there to give preference of employment?

619 A. Yes, sir.

Q. Aren't you, in effect, then, making a closed shop contract out of this?

A. I don't think so.

Q. But you know of no provision in there which specifically requires that you go to the I. S. U. Hall, that requires that you put on I. S. U. men, as a preference, when vacancies occur, is that not right?

A. It is necessary, in a fleet as large as ours, to have a central hiring hall for the men.

Q. Well, that, of course, is for your own convenience, Captain. We are speaking of the contract now. There is nothing in the contract that requires you to go to the I. S. U. Hall to get your men?

A. It is definitely in the contract that we must give preference to the I. S. U. men.

Q. Yes, but there is a difference there?

A. If an I. S. U. man is available to fill the vacancy, and if his services are satisfactory, we must give him preference, we must employ him under the contract.

Q. You must employ him if he is applying at the same time as a non-I. S. U. man?

A. That is correct.

Q. To strictly carry out the preference contract, is that not right?

620 A. We don't hire any men off the docks; that is dangerous.

Q. I am not interested in why you don't, I am only interested in the fact that you do go to the I. S. U. Hall every time, do you not?

A. That is correct.

Q. And by going to the I. S. U. Hall each time, are you not, in effect, making this a closed shop contract?

A. No, we are not making it a closed shop contract.

Q. Why aren't you?

A. Because all our ships' crews, for some years, has been hired through the I. S. U. Hall.

Q. If you hire only through the I. S. U. Hall, then you are making it a closed shop contract, aren't you?

Mr. McCorvey. Mr. Examiner, he has been calling on the witness for definitions of legal propositions. He has told him over and over again why it is, if the I. S. U. can furnish the men, he has to take them.

Trial Examiner Seagle. I think you should confine your questions to the Captain as to merely what he does under the contract.

Q. Captain, I would like to ask you one further question, and it is directed to the construction you gave yesterday of the contract, so, I suppose it is admissible. I believe you stated you interpreted the contract, in the case of those men who were discharged from

621 the "Bienville" and the "Fairland," you interpreted the contract, as prohibiting you from resailing those men, is that not right?

A. Ask that question again.

Mr. Hoskins. Read the question, Mr. Reporter.

(Question read.)

A. You mean rehiring the men, is that correct?

Q. Yes.

A. That is correct.

Q. Then, if as a matter of law, you are wrong in your interpretation, I say if you are, you would have no objection to reinstating the men?

A. I would not want to answer that question unless the question would come up about reinstating the men. If the question came up about reinstating the men, I would have to refer the matter to our general counsel to get a legal opinion.

Q. I say, if, as a matter of law, your interpretation is wrong, then, you would have no objection, would you?

A. I would not want to answer that question until I could, if the question did come up, I would refer it to the general counsel of our corporation and get his opinion, and I would be governed entirely by his opinion.

Q. Well, conceding that your general counsel went along with the law, if, as a matter of law, the contract did not so require you, and your general counsel stated to you that the contract did not so
622 require you, and if you failed to re-hire those men, or refused to re-hire them, then, as a matter of fact, would you be willing to reinstate them?

A. That would be a matter of a decision that I would have to make after thinking it over, and after I got that legal opinion from general counsel.

Q. In the answer, Captain Nicolson, filed by your company, I believe it is stated in substance, that the only reason you did not re-hire the men, with the exception of Pelletier, was because when it became necessary to outfit the crews you called the I. S. U. Hall and they were not I. S. U. members?

A. That is correct.

Q. Then, I ask you again, if, as a matter of law, your interpretation of this contract has been wrong, and you were so advised by your counsel, then, would you have any objection to reinstating the men?

A. If, under the law, I was forced to reinstate them men, I suppose I would reinstate them.

Q. How about if you were not strictly forced to reinstate the men, after you found out that you were wrong?

A. I don't think I could answer that question until the actual time came.

Q. Very well. Now, I believe you stated in the answer, and I am quite sure you testified yesterday, that at the time these incidents occurred with reference to the "Bienville" and the "Fairland,"
623 you were threatened with suit by the International Seaman's Union if you failed to live up to your interpretation of the contract?

A. That is correct.

Q. Were you so advised in writing by them?

A. I was not advised in writing, but the attorney for the International Seamen's Union of America, Judge Alex T. Howard, went to Mr. T. M. Stevens, the general counsel of the Waterman Steamship Corporation, and advised Mr. Stevens that if the Waterman Steamship Corporation violated any terms of that contract, they would be subject to suit, and after a discussion between our general counsel and counsel for the International Seamen's Union, our counsel agreed that we were subject to suit if we violated any terms of that contract.

Q. But you were not so notified in writing by the International Seamen's Union?

A. I was not notified in writing, nor did I hear any conversation which took place between counsel for the Seamen's Union and our general counsel.

Q. And when did counsel for the International Seamen's Union and your general counsel confer on this question?

A. I don't remember.

Q. How soon after the docking of these two boats?

A. I don't remember.

Examination by TRIAL EXAMINER:

Q. Well, was it before the docking or after the docking?

624 A. It was during the time of the contract. I don't know whether their discussion had anything to do with the "Fairland" and "Bienville" case.

Q. By that do you mean that the discussion may have been had at any time since March 1936?

A. Correct; yes, sir.

Q. It may have been as long as a year ago?

A. It may have been, or six months ago.

Q. What is your best recollection as to what took place?

A. I heard of that discussion three or four months ago, but I believe we can give testimony as to the exact date.

Q. Well, you heard about it three or four months ago, but the conversation may have taken place before that?

A. Yes, sir.

Q. Do you know about how long before that it had taken place?

A. No, sir.

By Mr. HOSKINS:

Q. Then, there was no specific advice as to these men that would sue if you failed to carry out your interpretation of the contract?

A. There was no written advice.

Q. Was there any advice as to these men on these occasions?

A. I don't remember.

Q. There was none to you?

A. I don't remember.

625 Q. Captain, I would like you to call upon your memory for a few other facts and figures. I realize you cannot carry them all in your head, so just give me your best recollection on them as we go along. I believe you told me that the Waterman Steamship Corporation is operating 24 vessels, is that right?

A. About that.

Q. And that is all in Trans-Atlantic or Porto Rico trade?

A. Yes, sir; I think we have four or five of our vessels chartered out to others at the present time; one of our ships is up at Seattle now loading for England.

Q. I believe you stated yesterday that the "Fairland" comes in for inspection or repairs, or both, every eight or nine months?

A. That is correct.

Q. Is that the general procedure with reference to all of your boats?

A. Vessels in the Island trade drydock about every six or nine months, and vessels in our Trans-Atlantic drydock in from ten to twelve months.

Q. Are you distinguishing between drydocking or being tied up for repairs, or are you using the terms interchangeably?

A. I am using the words just drydocking.

Q. How often do they come in for repairs, as distinguished from drydocking?

626 A. That all depends on the condition of the vessel and the trade that they are in, traffic conditions.

Q. All right, bearing in mind all of those, what is the general average for all of your boats?

A. We have vessels now that have been running two years steady, and have only been in a day or two for regular periodic drydocking due to traffic conditions. According to the surveys of the American Bureau of Shipping, it classifies vessels of that type, that they must be thoroughly overhauled every four years.

Q. I asked you, Captain, what was your general average in the Waterman Steamship Corporation, not the longest or the shortest times, but the general average?

A. Once a year.

Q. For repairs?

A. For repairs.

Q. And every six or nine months, in the case of the Island traffic, and ten to twelve months in the case of the Trans-Atlantic traffic?

A. Yes, sir.

Q. Now, is all of your repair work *dne* here in Mobile?

A. All of our repair work is done in the Port of Mobile, except such emergency repairs that develop while a vessel is on a voyage.

Q. And is all of your routine drydocking done here?

627 A. All of our routine drydocking is done in Mobile, except in the case of accident.

Q. Captain, what are the Federal regulations as to the inspection of boats?

A. Every twelve months.

Q. Every twelve months?

A. But, we put a vessel through inspection while she is in active operation. We do not lay up a vessel to put her through inspection.

Q. It is not necessary to drydock a vessel to have Federal inspection?

A. No, sir; that is as to her lifesaving equipment, boiler, and visible parts above the water. Inspectors are present at the regular drydocking, but you do not have to put a ship in drydock to undergo inspection.

Q. Now, referring back to the drydocking, when done every six to nine months and every ten to twelve months, respectively, what is the average length of time a boat is out of commission for those drydockings?

A. When a vessel is in active operation, 48 hours.

Q. Is that the average time?

A. Yes, sir; we have put them in drydock at half past seven, or even o'clock in the morning and taken them out at five o'clock at night.

Q. And you say 48 hours is the average?

628 A. 48 hours is the average time now if she does not need any bottom work.

Q. What is the average length of time which you have experienced in the past year?

A. 24 to 48 hours. We take a ship—we took a ship in yesterday morning at 9 o'clock and put her overboard at noon today, which is about 27 hours.

Q. What is the average length of time for repairs in the Port of Mobile?

A. That all depends on the condition of the boats and the amount of repairs and traffic conditions.

Q. How many boats have you had up for repairs in the past year in Mobile?

A. None of the vessels that we have been operating for any period of years have been up for repairs in the Port of Mobile——

Q. How many vessels have you put up in the past year?

A. How many vessels have we drydocked?

Q. No; that you have tied up for repairs, as distinguished from drydocking.

A. I will have to refer to my records. I know we tied up the "New Yorker" for repairs. I know we tied up the "Bienville" for repairs and I know we had the "West Madaket" laid up for repairs. One of the Fair boats, I don't recall which one, was laid up for

629 repairs. The "Fairland" was laid up for repairs, and five or six of the vessels, I can't remember them without referring to my records——

Q. What was the longest stretch that any one vessel was tied up for repairs, Captain?

A. I think the "Pan Kraft," ex-"New Yorker," was tied up for about thirty days for repairs.

Q. And what was the shortest time that any one boat was out, do you remember?

A. That is hard to say. We do certain repairs on our boats while the vessels are loading on the loading berth; our shops are right on the same property where we load all our vessels, and we do our repairs sometimes while the ship is loading and in active service.

Q. Yes; but you also take them out of commission sometimes to do your repairs, don't you, Captain?

A. That is entirely dependent on traffic conditions, when we take her out.

Q. But you do it?

A. Yes, sir.

Q. And as a matter of fact, you did?

A. Yes, sir.

Q. What is the shortest length of time during this past year that one of your boats has been taken out of commission here for repairs?

A. I can't say that without referring to our records. We
630 have our own docks, and we have put boats over to our own dock, where the shops are, for a period of one day. We put them over there for three days——

Q. So that you cannot give me the average for your boats, boats you mentioned were tied up for repairs in the past year?

A. No, sir; I cannot without referring to my records.

Q. Can you give me any idea of the number of sailing days lost by your boats being tied up for repairs in the past year?

A. No; I cannot without referring to my records.

Q. I believe you mentioned the "Fairland" and the "Fairisle"?

A. I think we had either the "Fairisle" or the "Fairport" out.

Q. Wasn't it the "Fairport" that was tied up?

A. I am not sure.

Q. Well, whichever one it was, it was tied up about eight days, wasn't it?

A. It might have been, but I am not sure.

Q. You don't know if it was?

A. No.

Q. You don't know that it was not that long?

A. No, sir.

Q. You don't know how many sailing days you have lost in the past year?

A. From memory, no. From records, I do.

Q. You cannot give us any approximation from your memory?

631 A. No, sir.

Q. And you would not know how many man-days have been lost?

A. No, sir.

Q. Now, Captain, you mentioned several boats here. Is it not true that in all of those cases, with the exception of the "Bienville" and the "Fairland," that the entire crew was kept on while the boat was under repair, except the men who resigned of their own accord?

A. No, sir; the "Pan Kraft" was laid up for repairs about a month, during which time I don't believe she had any men on board.

Q. How about the other boats, Captain?

A. I don't know unless I refer to my records or payroll as to how many men we had or if we had any.

Q. Don't you, Captain, as a matter of fact, that there were no boats that had the entire crews dismissed with the exception of the "Bienville," the "Fairland," and the "Pan Kraft"?

A. I would have to refer to my records, because we have in the past laid full crews off the night the vessel arrived from foreign.

Q. I am asking you, Captain, about these vessels you just told me about, and I will ask you if you are ready to swear that you don't

know at the present time that you did not lay off the entire crew, with the exception of these three boats, the "Bienville," the "Fairland," and the "Pan Kraft"?

632 A. I cannot swear to that. I could not swear that; I don't know what crews we carried on these vessels while they were under repairs.

Q. The "Pan Kraft," I believe, is the boat you told us about yesterday, that you bought out in Oregon?

A. Correct.

Q. It was named the "New Yorker," and you sailed it to New York?

A. That's correct.

Q. And after it made one or two crossings, you brought it down here; isn't that right?

A. Correct.

Q. And I believe half of your crew left at New York?

A. Correct.

Q. And you replenished that crew there?

A. Yes, sir.

Q. I believe you stated you replenished it with N. M. U. men; is that not right?

A. I was not in New York at the time the vessel was consigned to an agent, and the mate and the first assistant engineer of the vessel replenished the crew, and when the vessel arrived in the Port of Mobile, I found out they were N. M. U. men.

Q. You mentioned the mate and the first assistant. They are pretty cognizant of this contract that you have with the

633 I. S. U.?

A. On this particular vessel we did not have our own mate and first assistant, and when we purchased this ship in Oregon, at the time we purchased her she had a full crew on board and we retained the former owner's crew.

Q. Did you send your own master to the boat?

A. Yes.

Q. And your own master is acquainted with this contract?

A. Yes, sir.

Q. And your master is in charge of the boat?

A. Yes.

Q. And your master is practically in charge of the hiring of all men?

A. Yes, sir.

Q. And still he put on N. M. U. men?

A. Yes.

Q. And you don't know why he did it?

A. Why; I don't know why.

Q. Now, looking back at that, did you consider that a breach of your contract with the I. S. U.?

A. No, sir; I did not, and to refresh my memory, this "Pan Kraft" was not owned by the Waterman Steamship Corporation; she is

owned by the Everett Steamship Corporation, of which the Waterman Steamship Corporation are managers, and the Everett Steam-
634 ship Corporation did not have any contract with any labor organizations.

Q. In other words, now, all your testimony yesterday to show the good faith of the Waterman Steamship Corporation, with reference to the N. M. U., and your desires not to discriminate, as brought out by your testimony concerning this "Pan Kraft," can be stricken from the record on the basis of the fact that she is not a Waterman boat?

A. The Waterman Steamship Corporation is the manager of that boat.

Q. But the Waterman Steamship Corporation does not own the boat?

A. The Waterman Steamship Corporation owns the majority of the stock of the Everett Steamship Corporation.

Q. Now, if the Waterman Steamship Corporation owns the majority of the stock, and the Waterman Steamship Corporation manages and operates the boat, why do you construe it that the "Pan Kraft" does not come under your I. S. U. contract?

A. I guess she could come under the I. S. U. contract if we wanted to make it that way, but being a different owner, and we being managers of the ship, could use the I. S. U. contract or not, if we saw fit.

Q. Well, Captain, do I understand that this contract is an instrument which you could follow or not, at your discretion?

A. So far as Waterman-owned vessels, we must follow it.

635 Mr. McCorvey. Mr. Examiner, I think the witness is being asked questions about legal propositions. If the Waterman Steamship Corporation owns 99 percent of some other corporation, and that other corporation has no contract with the I. S. U.——

Trial Examiner Seagle. The objection is overruled.

Mr. McCorvey. We except.

Q. The Waterman Steamship Corporation does manage boats, don't they?

A. Correct.

Q. And as such the Waterman Steamship Corporation does hire and fire crews?

A. In this particular vessel the Waterman Steamship Corporation did not hire and fire.

Q. I am asking you, as a general rule, that refers to the boats which you manage?

A. In the Port of Mobile; yes, sir.

Q. And this boat is specifically operated out of the Port of Mobile, is it not?

A. That vessel did not come to the Port of Mobile until we were owners of it for a period of five months.

Q. Now, is the Waterman Steamship Corporation the owner of that boat?

A. The Waterman Steamship Corporation are now the owners of the steamship "Pan Kraft." At the time she was in New York, when her rank and file crew was employed, she was owned by the Everett Steamship Corporation, and she was chartered to e Cargo Grain Company.

Q. When the "Pan Kraft" reached Mobile, was it then the property f the Waterman Steamship Corporation or was it the property of e Everett Steamship Corporation?

A. At the time she arrived in Mobile, she was the property of e Everett Steamship Corporation.

Q. And how soon after that did she become the property of the Vaterman Steamship Corporation?

A. During the time she was in the Port of Mobile some 20, 30, r 40 days.

Q. After it arrived or immediately upon its arrival?

A. During the time she was in here under repairs.

Q. I am asking you, if you can tell me, how long after she got in ere?

A. Not exactly.

Q. Approximately?

A. Oh, a month after.

Q. But all the time before that, before she became the property f the Waterman Steamship Corporation, she was being managed y the Waterman Steamship Corporation?

A. The vessel was time chartered first to the Cargo Grain Company.

Q. Now, Captain, I think my question can be answered yes or no.

A. The vessel was time chartered to the Cargo Grain Company, and later time chartered to the Waterman Steamship Agency, imited, in New York, who looked after the management of the ssel, and she was supervised, you might say, from the Mobile office, but the fact that she was away from here, she was not directly anaged by us, although we had the final say in the vessel.

Q. Then, as a matter of fact, you don't know whether or not this ssel properly belonged under this I. S. U. contract?

A. No, sir.

Q. But you interpreted it as not belonging under it?

A. When the vessel was purchased on the Pacific Coast there was Sailors' Union Pacific Crew on board, employees of the former ner. We retained that entire crew. When the vessel reached w York, part of that Pacific crew left, and we sent them back Portland, Oregon.

Q. And after they left, they were replaced by N. M. U. men, were y not?

A. They were replaced by seamen in New York who applied for ployment.

Q. But who were N. M. U. men?
A. Who were N. M. U. men.
Q. And you hired them?
A. I don't know what organization they belonged to.
638 Q. You did not question them?
A. I did not question them; no, sir.
Q. And you did not hear that they were questioned; is that right?
A. No, we did not question them.
Q. You did not go to the I. S. U. Hall to get the men?
A. I don't know where they went.
Q. The master of the vessel employed them?
A. The master of the vessel employed them. I understand in the Port of New York the I. S. U. don't hire through their hiring hall, and that the men can go to any dock and get employment.
Q. You don't know whether or not you violated your contract by hiring these N. M. U. men?
A. We did not violate the contract.
Q. How do you know you did not?
A. Because I wasn't there at the time.
Q. You don't deny that the master of the ship represents the Waterman Corporation, and that the Waterman Corporation is responsible for his acts?
A. The ship was owned at that time by the Everett Steamship Corporation, who had a contract with no labor organization.
Q. But you were managing the ship, you testified?
A. That is correct.
Q. Now, Captain, when the "Pan Kraft" got down here, it was put up in drydock; is that right?
639 A. That is correct.
Q. Laid up for repairs?
A. That is correct.
Q. And that is the only other crew that you can think of, where the whole crew was laid off indefinitely?
A. I will have to look up my records.
Q. Now, that is the only one you thought of this morning?
A. I will have to look up my records, because we handle so many vessels.
Q. So, the whole crew was laid off on the "Pan Kraft"?
A. Yes, sir; they were.
Q. I will ask you now if you can recollect any other boat where the whole crew was laid off?
A. No, sir.
Q. In other words, those are the only vessels, the "Bienville" and the "Fairland" and the "Pan Kraft," where the crew was laid off, is that right?
A. I cannot answer that without inquiry.
Q. You can answer that yes or no.
A. Yes, sir.

Q. Those three are the only ones you remembered this morning?
A. Yes, sir; without referring to my records.
Q. Is it a mere coincidence that these three boats are the only boats you had with N. M. U. members?
A. No, sir.
Q. As a matter of fact, don't the "Pan Kraft" belong to the Pan-Atlantic Steamship Corporation?
A. No, sir; the registered owners of the vessel are the Waterman Steamship Corporation.
Q. About when did you acquire that vessel, Captain; when did it become the property of the Waterman Steamship Corporation?
A. About August 1937.
Q. August of 1937?
A. Yes, sir.
Q. Now, when a boat goes in for repairs, generally speaking, what type of work is done for it, if it is not an emergency job, but if it is a long repair job or a general repair or overhaul job?
A. Well, it consists of a little of everything; carpenter work, electrical work, plumbing work, machinist's work, boilermaker's work, scaling, and coating.
Q. And cleaning the polish and scraping the paint?
A. That is correct.
Q. General cleaning up, in other words?
A. Yes, sir.
Q. There is quite a bit of rough work that does not require highly trained men?
A. Oh, a lot of it requires very skilled men.
Q. Yes; but there is an awful lot that does not require skilled men, is that not true?
A. That is correct.
Q. Well, isn't it very economical, and isn't it your practice to keep your crew to do that work, that rough work, if you can?
A. No; it is not. We have sometimes employed as many as 150 laborers in our shops.
Q. You do pay more for those laborers that you employ at drydock rates than you pay your crew?
A. We would not pay drydock laborers to repair our vessels in our own shops.
Q. My question is, do you pay these laborers at the drydocks more or less than your average pay for your seamen, your ordinary seamen?
A. Figuring room and board, subsistence, I believe that the laborers get a little less money than the seamen.
Q. What do you pay your laborers?
A. I think the minimum scale is around 42 cents an hour.
Q. And you generally work them eight hours a day?
A. Eight hours a day.
Q. And your average rate of pay for your seamen is what?
A. Our average rate of pay for our seamen, I should say, would run around $60 per month with their room and board, and——

642 Q. Let us speak only of cash for the moment. What is the average rate of pay for your unlicensed seamen in cash?

A. $72.50 per month.

Q. That is the average?

A. Based on thirty days a month, and the seamen, if they are employed are paid overtime, Saturday afternoon, Sundays, and all.

Q. That is true of all industries, isn't it?

A. No; not on an hourly salary man, he gets paid hour for hour.

Q. The seamen work on an hourly basis?

A. The seamen get paid on a monthly basis, but the men you are comparing with the seamen they get paid 42 cents an hour for hour.

Q. What do you consider the value of the meals which you furnish the seamen every month?

A. I believe that the scale is in our contract.

Q. Will you find it for me and point it out?

A. They figure 35 cents per meal and 75 cents per night for lodging.

Q. That is what you pay if your men go off the boat, is that right?

A. That is correct.

Q. Then, that is not the figure of what it costs you to house and feed those men?

643 A. Right at the present time it is costing us about 75 cents per man, per day, to feed our vessels, plus the cook's wages and steward's wages. During the time the vessel is in port, if a vessel is going to be in port for a length of time, it is a great deal cheaper for us to pay them subsistence than it is to cook on board the vessel.

Q. Now, following that out, and taking into consideration the fact that your crew is experienced on board that vessel, and knows the vessel, isn't it more feasible to keep them to do this rough work than to hire laborers?

A. No, sir; I don't think so. I don't know what you mean by "rough work" on board a ship.

Q. Well, the work that they are competent to do, otherwise you would have to hire mechanics and laborers from the dock gang to do it?

A. Well, we have skilled scalers and skilled painters in our shop that are doing that work on our ships every day. We employ a great many seamen steady, and a great many water tenders steady.

Q. I recognize that you employ a good deal of people, but I am still asking you if it is work that these men can do?

A. It all depends on the individual man.

Q. You can draw an average from your large scale of operations. Is it not, as a general rule, more economical and more feasible

644 to keep that crew to do repair work than to hire them, to hire that labor from the docks, where you have to hire your laborers or skilled mechanics?

A. No, sir; it is not. The most economical way for us to handle our boats under repairs is to lay the men off until our shop brings

the shore men on that boat that are obtained in their jobs to do that work.

Q. Do you do that, as a matter of fact?

A. We do it at times.

Q. At times, but I am speaking of your general practice?

A. Our general practice is to do 95 percent of our repairs in our shops.

Q. And your general practice is to keep your crews on board while repairs are being done?

A. No, sir.

Q. It is not your usual practice?

A. It depends on the individual case.

Q. Your general practice is not determined by individual cases?

A. Our general practice is to do 95 percent of our repairs, including scaling and coating in our own shops.

Trial Examiner SEAGLE. That is not the question. The question is what is your general practice with respect to retaining crews when you are doing repair work on the vessel. That is a totally different question.

The WITNESS. It all depends on the individual crews and
645 the recommendations we get from the officers on the ship.

Trial Examiner SEAGLE. But on many occasions, you do retain crews, do you not?

The WITNESS. Yes, sir.

Trial Examiner SEAGLE. Now, you ought to know how often you do retain the crew.

The WITNESS. We have had so little lay-up periods during the past two years, and we have had ships laying in the port of Mobile with no crews on board; we have had six or seven ships laid up with no crews on board during the past two years; we have had very little lay-up time.

Q. But in your lay-up time for the last two years, or three years, haven't the greater percentage of your boats for repairs in drydock, kept the members of the crew on board?

A. I would have to consult my records. If you can reserve the answer to that until this afternoon, I will answer it more definitely.

Trial Examiner SEAGLE. Very well, will you consult your records?

The WITNESS. Yes, sir.

Q. Captain, you testified pretty much in detail yesterday with reference to the type of repair work that was done on the "Bienville" and the "Fairland," so, I suppose you are qualified to go ahead and answer some questions about that without consulting your rec-
646 ords. How long was the "Bienville" actually out of commission, Captain?

A. I think I got a note of it. I happened to look that up. From July 5th to August 1st, that is about 27 days.

Q. You are referring to a note that you made at your office yesterday, Captain?

A. What?

Q. You are referring to a note that you made at your office yesterday, Captain?

A. Yes, sir.

Q. And how long was the "Fairland" tied up?

A. I did not look the "Fairland" up. I think she was tied up about seven days.

Q. You are sure of that?

A. I am not sure of that, it may have been a day less.

Q. It may have been five?

A. It may have been five or it may have been nine.

Q. And it may have been four?

A. I don't think it was as short as that.

Q. You are not sure, though?

A. No, sir.

Q. It may have been four?

A. Yes.

Q. On the "Bienville," what work was done on that, Captain?

A. We only owned the vessel about four months and operated it two trips to Europe, and she had not been laid up for
647 repairs for several months when we brought her in for repairs. The repairs included a little of everything, and a whole lot of some things on board the vessel. Amongst her major items was altering the crew's quarters, and I think I have given the details in my direct examination.

Q. Well, you have no objection to repeating it, have you?

A. No, sir. We altered the crew's quarters, lifted the turbine casing for examination; did certain reapirs to the turbine; did some boiler work; altered the deep tank into a cargo hold, converted fore peak tanks and fore peak store rooms into fuel tanks; did miscellaneous electrical, carpenter, and pipework throughout the vessel.

Q. About how many men worked on the "Bienville" while she was in, Captain?

A. I would again have to consult our records, but I should say an average of 125; 130 to start with and it was cut down as the work progressed.

Q. You say an average of 125 or 130, do you mean a day?

A. Yes, sir.

Q. And it was cut down?

A. Yes.

Q. What percentage was it cut down as the work progressed? At the end of the first week how many were working?

A. I could not say, because I was not actually there and I did
648 not actually attend to the repairs of the "Bienville," but I have someone qualified who was actually there.

Q. Your information as to what all was done is based on what?

A. The information of what was done was based on orders given by me to do that work.

Q. Do you know that that work was done?

A. Yes, sir.

Q. And you got that from your records?
A. I got it from our records.
Q. There were about 125 to 130 men working when you started out?
A. I think so.
Q. And that number was probably steady most of the time, is that right?
A. I don't think so; I think we started with a large number and cut it down.
Q. Now, as a matter of fact, wasn't a great deal of that work, work which the crew on the boat could have done?
A. The big part of that work, the major part of that work was not within the capacity of the crew to do.
Q. Wasn't there a lot of work there that the crew could have done?
A. There was certain work that the crew could have done, but we had no means of housing that crew on board the vessel. It was not practical to keep the crew by the vessel.
649 Q. It was work, though, that the crew could have done?
A. In any vessel——
Q. Captain, my question is with reference to the "Bienville."
A. Yes, sir; that was work that they could have done.
Q. It is work that the crew ordinarily would have done, isn't that right? I believe you testified yesterday that the sanitary conditions prevented you from keeping the crew?
A. That is correct.
Q. It is work that they would have done if it had not been for those sanitary conditions?
A. There is plenty of work within the "Bienville" that the crew could have accomplished, and I think that some of the work the crew did accomplish.
Q. Well, there was work there that the crew could have done?
A. There is work there that the crew did do.
Q. You say that the crew did do?
A. Yes; the crew did do, being employed on our shop payroll.
Q. Actually, you did not keep the crew as such?
A. We kept the crew in the shops and it is common practice for us to employ the crews in our shops.
Q. But on the "Bienville" you did not keep the crew, you discharged them; you fired them?
A. And we re-employed them in our shops.
Q. You re-employed individuals?
650 A. We re-employed them in our shop to work on the "Bienville."
Q. You did not keep your crews as you ordinarily do?
A. We handled the "Bienville" as we would handle any other vessel which had the same kind of repairs on her.
Q. In the case of an ordinary vessel, you would have kept a crew on board, wouldn't you?
A. In the case of an ordinary vessel, we may have kept the crew on board, but if a vessel that we have owned for a long period of

time comes in, it would not be necessary to rebuild the crew's quarters.

Q. Well, without reference to that, when work is done in drydock your general practice is to keep the crew, if you can house them?

A. Not necessarily. We have no regular, general practice.

Mr. McCorvey. We request that the Examiner permit us to withdraw Captain Nicolson from the witness stand at the present time, and use Captain Norville, basing this request on the fact that Captain Norville's vessel is supposed to sail at noon.

Trial Examiner Seagle: Do you have any objection to that?

Mr. Hoskins. I have no objection and I will be very glad to cooperate.

(Witness excused.)

651 James A. Norville, a witness called by and on behalf of the Respondents, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Johnstone:

Q. Captain Norville, are you employed by the Waterman Steamship Corporation?

A. Yes, sir.

Q. Were you the master of the "Fairland" at the time she came in from a voyage in July 1937?

A. Yes, sir.

Q. When you arrived on the "Fairland" in Mobile, did you received orders to drydock the ship?

A. To put her in the drydock; yes, sir.

Q. From whom did you receive those orders?

A. Mr. Ingram.

Q. Mr. Ingram is what?

A. Port Engineer.

Q. Did you also receive any orders from Mr. Ingram in regard to whether or not you should kill the steam on the ship?

A. Yes, sir; kill the steam at midnight and lay all the crew off.

Q. And his orders were to kill the steam and lay the crew off?

A. Yes, sir.

Q. Now, when you kill the steam on a ship, does that prevent
652 the sanitary appliances on the ship from operating?

A. Yes, sir.

Q. It is not practicable, when the steam is killed, to keep a crew on board the ship?

A. Not without sanitary conditions; no; sir.

Q. Captain Norville, do you know how long the "Fairland" laid in drydock?

A. About seven days.

Q. Captain Norville, in compliance with Mr. Ingram's orders, you did lay the crew off?

A. I laid the crew off after paying them off.

Q. And when you lay the crew off, what is the customary procedure? Do you go before the Shipping Commissioner?

A. Yes, sir.

Q. And the crew signs releases and discharges before the Shipping Commissioner, is that the usual procedure?

A. Signs the releases; yes, sir.

Q. The articles under which the crew was shipped on the "Fairland" on these voyages, were they articles for one voyage?

A. One voyage; yes, sir.

Q. It is customary, and it is also the law, is it not, Captain Norville, that at the end of a voyage on which the crew has been shipped under articles calling for one voyage, that the crew be discharged at the end of the voyage before the Shipping Commissioner?

653 A. Yes, sir.

Q. Captain Norville, were you present in the Shipping Commissioner's office at the time that this crew on the "Fairland" was discharged by the Shipping Commissioner?

A. They *was* paid off on board the ship.

Q. The Shipping Commissioner was present on board the ship at that time?

A. Yes, sir.

Q. And you were also present?

A. Yes, sir.

Q. Captain Norville, in July 1937, did you, as one of the masters on the ships of the Waterman Steamship Corporation, receive from Captain Nicolson a letter dated July 13th, 1937, addressed: "All Masters," stating, "In view of the fact that the National——

Trial Examiner SEAGLE. Pardon me, are you intending to offer that letter in evidence?

Mr. JOHNSTONE. This letter has already been offered in evidence.

Trial Examiner SEAGLE. Well, suppose you just show a copy to the witness and ask him if he received it?

Q. Did you receive a letter dated July 13th, 1937, from Captain N. Nicolson, addressed "To All Masters," a copy of which I hand you, being Respondent's Exhibit 16 in this case?

A. Yes, sir.

654 Q. In accordance with the instructions in this letter, what action did you take?

A. I told the Chief Officers to comply with that letter, and to the best of my knowledge it was carried out.

Q. In order that it may appear in the record, will you state the instructions which you gave to the Chief Officer?

A. I showed the Chief Officer the letter and instructed him to carry out the orders in the letter.

Q. In other words, you instructed him that you would not allow any representatives of either the I. S. U. or of the N. M. U. to come on board the vessel for the purpose of soliciting memberships in either union?

A. Yes, sir.

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Q. So far as you know, Captain Norville, has any member of the I. S. U. solicited memberships on board any vessel of which you have been in charge at any time since you received this letter?

A. No, sir.

Q. Captain Norville, generally speaking, on what occasions do representatives of the I. S. U. come on board the ships under the passes that they are allowed?

A. When the vessel is paying off; they collect dues.

Q. They come on board at the time the vessel is paying off?

A. To collect dues; yes, sir.

Q. Generally are you present at the time that the men are being paid off?

655 A. Yes, sir.

Q. And you know that that is the activity of these men at the time that they come on board?

A. To the best of my knowledge; yes, sir.

Q. That they collect dues at that time?

A. Yes, sir.

Q. Captain Norville, at any time since you received this letter of July 13th, 1937, to which I have referred, did you ever see any representatives of the I. S. U. on board any ship of which you were in charge, doing anything other than collecting dues from members of the I. S. U.?

A. No, sir.

Q. Captain Norville, how long have you been employed on ships of the Waterman Steamship Corporation?

A. As a lisenced officer?

Q. In any capacity.

A. Since 1924.

Q. You were employed by the Waterman Steamship Corporation, were you, in March 1936?

A. Yes.

Trial Examiner SEAGLE. Employed as what?

Mr. JOHNSTONE. Just employed at that time.

Trial Examiner SEAGLE. I think the witness stated he was with the Waterman Steamship Corporation since 1924.

The WITNESS. Yes, sir; but I have been absent.

656 Trial Examiner SEAGLE. Then, you have not been continuously with the company?

The WITNESS. Not since 1924. Since 1926, I missed about a year.

Q. When was that that you were not with the Waterman Steamship Corporation?

A. That is a hard question.

Q. How many years ago about?

A. I think it was 1930.

Q. In other words, you were with the Waterman Steamship Corporation in March 1936?

A. Yes, sir.

Q. Do you know at that time to what labor organization the majority of the members of the unlisenced personnel of the Waterman Steamship Corporation belonged?

A. The I. S. U.

Q. Do you know approximately what percentage of the crews, the members of the unlisenced personnel, belonged to the I. S. U.?

A. No, I couldn't estimate that.

Q. Do you know that it has been the practice prior to that time for the members of the crews of the Waterman Steamship Corporation to be employed through I. S. U. Halls?

A. Yes, sir.

Mr. LUSTIG. Mr. Examiner, at this time may I suggest that
657 instead of counsel testifying for the Captain, that he might ask him what the facts were instead of telling him. The Captain is a more literate person than the ordinary seaman.

Trial Examiner SEAGLE. Well, I think that would be a desirable procedure.

Mr. JOHNSTONE. I was merely attempting to get through as quickly as possible, because the Captain has to sail on his ship. Do you know, Captain Norville, whether or not more than fifty percent of the unlisenced personnel of the Waterman Steamship Corporation were members of the I. S. U. in March 1936?

A. About fifty percent or more.

Trial Examiner SEAGLE. I thought you just said you could not estimate the percentage of the personnel belonging to the I. S. U.

The WITNESS. Well, they all shipped out of the I. S. U. I imagine they belonged to the I. S. U.

Trial Examiner SEAGLE. You just imagined that, but you don't know?

The WITNESS. I never saw the books, no, sir. I don't go by and examine the union books.

Q. Do you know, Captain Norville, to what labor organization the members of the crew of the "Fairland" belonged? I refer to the crew at the time they went out on this last voyage before it was drydocked in July 1937.

A. The I. S. U.

658 Q. Do you mean by that that all of the members of the unlisenced personnel belonged to the I. S. U., or a majority of them?

A. One hundred percent, because they shipped right out of the Hall.

Q. Captain Norville, at the time this ship was laid up in drydock, if it is laid up as much as six or seven days in the dry dock, is it the economical thing to do to kill the steam on that ship?

A. Yes.

Mr. JOHNSTONE. That is all.

Cross examination by Mr. HOSKINS:

Q. Captain Norville, you say you have been with the Waterman Steamship Corporation during the period since 1924?

A. Yes, sir.

Q. What was your first employment with the Waterman Steamship Corporation?

A. Ordinary seaman.

Q. And how long have you been a master or captain?

A. Six months.

Q. What were you immediately before that?

A. Chief Officer.

Q. Is that the next ranking officer on the boat, below the captain?

A. Yes, sir

659 Q. How long were you a chief officer?

A. Three years.

Q. Now, with the exception of this one year, the year 1930, has your employment been continuous with the Waterman Steamship Corporation?

A. Yes, sir.

Q. You worked steadily all the time, is that right?

A. Yes, sir.

Q. How long have you been on the "Fairland"?

A. Six months; five months.

Q. That is after you became a captain?

A. Yes, sir.

Q. Are you still connected with the "Fairland"?

A. No, sir.

Q. What ship are you on now?

A. The "Afoundria."

Q. When did you switch from the "Fairland" to the "Afoundria"?

A. I joined the "Afoundria" yesterday.

Q. Since July 1937, have you made a trip on the "Fairland" as master?

A. Yes, sir.

Q. How many trips?

A. Three trips, I think, about three trips.

Q. Were those trips to Porto Rico?

A. Porto Rico; yes, sir.

660 Q. Now, referring back to this time when you board the "Fairland" in here in July, going back further than that, when you came in in July was that the termination of your first voyage as captain?

A. Yes, sir.

Q. How many voyages had you made, would you estimate, as chief officer altogether?

A. As chief officer?

Q. As chief officer; yes.

A. About forty.

Q. Had you ever been on a boat before, as chief officer, that went into drydock?

A. Yes, sir.

Q. How many times?

A. About ten times.

Q. Now, in those ten times you received your notice that you were going into drydock before you got into port, did you not?

A. Yes, sir.

Q. In other words, this was an unusual case, wasn't it, you didn't know that you were going into drydock?

A. Oh, no; we knew that before we left.

Q. You knew before you left that you were going into drydock when you came back?

A. Yes.

661 Q. Did you know before you left what was to be done in drydock?

A. No, sir.

Q. You just knew that you were going into drydock?

A. Yes, sir.

Q. Now, these other ten times that you were chief officer on the boat, was the steam killed?

A. No, sir; we were only on drydock twenty-four hours.

Q. The steam was not killed on those occasions?

A. No, sir.

Q. And on this occasion it was?

A. Yes, sir.

Q. When you brought the "Fairland" on to drydock?

A. Yes; and it was in the yard about seven days.

Q. How long was it on drydock?

A. About thirty hours.

Q. In other words, six hours more than your average length of time?

A. Yes, sir.

Q. And for those six hours you killed the steam?

A. Yes.

Q. And the reason you killed the steam is for the economical advantage, is that right?

A. Yes, sir.

Q. You saved a little oil?

662 A. Yes, sir.

Q. How much oil would you use in six hours?

A. I could not give you an answer; on account I am not an engineering man.

Q. That is the only advantage?

A. Well, you got your food.

Q. I mean shutting down the steam; you shut it down for economical reasons?

A. Yes.

Q. I asked you isn't that the only advantage, as far as actual cost is concerned?

A. Well, unless you got work on the engines or boilers.

Q. Just consider it from the economical viewpoint; just considering it that way?

A. Yes.

Q. Just shutting it down for economical reasons the only thing you save is fuel, is that right?

A. Yes.

Q. You save six hours of fuel consumption?

A. We were in the drydock thirty hours and seven days in the yard.

Q. I am asking you about the drydock. You were in drydock thirty hours?

A. You don't kill the ship just for the drydock, but it was in the yard.

663 Q. Let us consider the drydock first and then we will come to the other thing. At any rate, just to consider the drydock, you were in drydock thirty hours?

A. About thirty hours.

Q. And on the other ten boats that you had as chief officer, those were in drydock twenty-four hours?

A. Just about.

Q. I understand you are giving your best judgment, and I am not trying to tie you down to hours and minutes; this is your best recollection on the average?

A. Yes.

Q. In other words, the "Fairland" was there six more hours on drydock?

A. Yes, sir.

Q. And in the case of the "Fairland," for economical reasons, you shut down the steam?

A. Yes, sir.

Q. And you only had six more hours on drydock, is that right?

A. That is right.

Q. In other words, your total saving, looking at it from that economical viewpoint, was six hours of fuel consumption?

A. Yes, but that ship was in drydock for thirty hours and after she was in the loading berth for twenty-four hours.

Q. Let us speak of the drydock, as far as the drydock is
664 concerned, is that right?

A. Yes, she was on drydock.

Q. You say after she came out of the drydock it went into the yard, or something?

A. Yes, we laid in the yard.

Q. How long was it before steam was actually put on again?

A. She was killed about six days.

Q. What is the process in killing steam? I don't know enough about machinery. How do you do it, do you just let the fires die out?

A. Yes.
Q. It is an oil burning vessel?
A. Yes.
Q. And how long does it take to get up your required pressure of steam when you start again?
A. I would say about twelve hours or more.
Q. Don't you have to drain the boilers, or something, to do that?
A. To drain off?
Q. Don't you drain the boilers to kill steam?
A. No, sir.
Q. It is just a simple process of turning on and off the gas or the oil?
A. Yes, sir.
Q. But it takes twelve hours to get your pressure back?
A. Yes, sir.
Q. In other words, there is a cost, is there not?
A. Sir?
Q. There is a cost to the company in killing the steam and bringing it up; that simple process is costly. I am asking you does it cost more to keep the steam up—let me reframe the question, I am afraid I confused it. The process of shutting off steam is a costly operation, is it not?
A. I don't see why.
Q. Well, if it takes twelve hours to get it back, don't you have your engines running, or your gas going, your oil going for twelve hours, without getting efficiency on it?
A. Well, I am no engineer on that.
Q. Very well, Captain, I will drop that question. The other ships that you brought in drydock for twenty-hour hours, how long were they in the yard?
A. Twenty-four hours from the time they went on drydock until he went to the loading berth.
Q. To what?
A. To the loading berth to start loading.
Q. How long, on the average, were they in port altogether?
A. About thirty-six hours.
Q. And you kept steam up all the time?
A. Yes, sir.
Q. Now, you are pretty well acquainted with drydocks, and all?
A. Yes.
Q. Aren't dry docks equipped with compressed air, a compressed air apparatus to operate the sanitary machinery of the boat?
A. They got air there, but I don't know whether they hook it on to the ship.
Q. Don't you know that they generally do it?
A. No, not generally.
Q. That is what they use when they have the steam shut off?
A. Yes, sir.

Q. And you don't know, as a general proposition, whether they hook on this air?

A. Yes.

Q. But you do know that they have air there?

A. They have air there; yes.

Q. Now, on these ten trips that you made, you say your boats were in here about thirty-six hours; is that right?

A. Yes.

Q. Didn't you, on the average, ship the same crew each time you went out again?

A. No, sir.

Q. Didn't you sign the same men on and off?

A. Some—about, I would say, about fifty per cent of them made the trip.

667 Q. Let us get this correct. I am afraid we are talking about different things. Unless you have something against a man's work, or unless the man resigned, you gave him the opportunity to sign on again, didn't you?

A. Yes.

Q. Is that right?

A. Yes, sir.

Q. That is the general custom throughout the industry, isn't it?

A. Yes, sir.

Q. The general custom on Waterman boats; is that right?

A. Yes, sir.

Q. That includes these cases where the boats went on dry dock for twenty-four hours; is that right? We are speaking with reference to those boats.

A. Yes, sir.

Q. Is the "Fairland" your first experience on a boat, Captain, where the boat was tied up several days?

A. Yes, sir.

Q. That is the only case you know of?

A. Yes, sir.

Q. Since 1924?

A. Yes, sir.

Q. You have never been on another boat that was tied up several days?

A. I never worked on her; no, sir.

668 Q. What has been your experience; I think you said you had been going to sea since 1924?

A. Oh, yes; as a sailer.

Trial Examiner SEAGLE. I think the Captain's answer is clear enough. He said he never worked on a boat that has been in dry dock or laid up as long as the "Fairland."

Mr. HOSKINS. I did not restrict my questions to the boats he worked on.

Q. I asked you, of your own knowledge, do you know of any boats that were laid up?

A. I have never been on any ships that have been laid up.
Q. Have you, in your work with the Waterman Steamship Corporation, known of any boats that were laid up?
A. Yes.
Q. Can you think of any particular one? What is the most recent one?
A. Well, the "Bellingham" is the last one I have known.
Q. When was that laid up?
A. About a year and a half, I judge.
Q. About a year and a half ago?
A. Yes.
Q. How long was she laid up, do you know?
A. I don't know, I just came in there and laid on the docks and left in thirty-six hours.
Q. Was it laid up at the time?
669 A. It was laid up at the time.
Q. Do you know how long it had been in?
A. No, sir; I do not.
Q. Do you know when it sailed again?
A. I do not; no.
Q. Do you know whether or not the crew was working on it?
A. I don't know, sir.
Q. Now, Captain, you say, I believe you said in answer to Mr. Johnstone's question, when the "Fairland" got in you called the United States Shipping Commissioner and the men signed the discharges and releases and so forth; is that right?
A. The Commissioner met us on the dock. We came in and tied up, and the Commissioner was on the dock waiting for us.
Q. Tell me what happened.
A. When we tied up to the dock the Commissioner came on board, and we immediately paid off as soon as I got the money, and it did not take an hour until after we docked when we were all paid off.
Q. And did they sign the releases?
A. The releases and articles.
Q. Just the regular articles?
A. Yes, sir.
Q. And the releases we speak of are just releases to the company for any claims for wages on that voyage?
A. It releases the company and the crew both.
670 Q. That is what signing off means?
A. Yes, sir.
Q. Just for the wages on that voyage for that crew?
A. Yes.
Q. In other words, it is a pay-roll receipt?
A. No; it is signing off the contract, releasing them from that contract, the ship and the sailor.
Q. A release for wages?

A. No; releasing them from the voyage. If the ship is going right out they sign other articles.

Q. And when they sign that release they release the owner for the wages?

A. The wages, they sign for the wages; yes, sir.

Q. And that is all they sign?

A. They sign releases.

Q. And there is only one signature?

A. Sir?.

Q. They only sign once?

A. I think it is three copies.

Q. But it is the same thing?

A. Yes, sir.

Q. It is only one document which is signed, but they may sign two or three times?

A. Yes, sir.

Q. And that is commonly known as ship's articles?

671 A. Yes, sir.

Q. And they sign a release of the company for their wages, or any further claims for those wages?

A. Yes, sir.

Q. It is commonly referred to as receiving discharges; isn't it?

A. Sir?

Q. It is commonly referred to as receiving discharges; isn't it?

A. Yes.

Q. It is just a discharge of the pay from that ship?

A. It is a discharge until she gets ready to go out again, or until you sign them on for another voyage.

Q. The word "discharge" is a discharge from that particular voyage?

A. Yes, sir.

Q. Do you consider it a complete termination of employment?

A. Yes; until they sign on again.

Q. Or until you work them in the dock?

A. Yes.

Q. And you quite often have work on the dock?

A. Yes.

Q. When boats are loading or unloading?

A. Yes, sir.

Q. And they are not on articles then?

672 A. Yes; they sign off from that one and sign right on for another one.

Q. Did anybody sign on again on the "Fairland"?

A. No, sir.

Q. There was no opportunity to sign on?

A. Sir?

Q. There was no opportunity to sign on?

A. We were not signing on.

Q. In other words, would you state, from your viewpoint, there was nly a moment of vacancy on that ship, is that correct?
A. Yes, sir.
Q. Captain, coming down to this letter which you received as the aster of the boat, when did you receive that letter which is Re-ondent's Exhibit 16, I believe?
A. I don't know the exact date.
Q. Well, give it to me as near as you can?
A. I received it when I got back to Mobile on that trip. I don't now what date it was.
Q. You received it—you say "that trip." I don't know what trip ou are referring to. You mean the next to the last trip before you ry docked?
A. After we dry docked.

Examination by Trial Examiner SEAGLE:

Q. Did you receive it after you sailed with the "Fairland" 73 when it left dry dock?
A. Yes.
Q. And where did you sail?
A. Where we sailed from?
Q. Yes.
A. Mobile.
Q. Now, where did you sail to?
A. New Orleans, and down to Porto Rico.
Q. Where did you receive that letter, in New Orleans or in Mobile?
A. In Mobile.
Q. Then, you received it before the ship——
A. (Interrupting.) After I got back on that trip.
Q. Oh, you did not receive it until you had returned both from ew Orleans and Porto Rico, is that correct?
A. Yes, sir.
Q. How long does the trip take?
A. Twenty-one days.
Q. So you could not have received the letter until twenty-one days fter you left Mobile?
A. Yes, sir.
Q. Now, when did you leave Mobile?
A. I couldn't tell you that date.
Q. Well, I think there has been testimony here that the "Fairland" came in on July 6th, I believe.
74 Mr. MCCORVEY. The fifth, I believe it was.
Trial Examiner SEAGLE. The fifth.
Q. You say you were in dry dock here for about seven days?
A. We were shut down for six days.
Q. That would bring us up to the eleventh, would it not?
A. About the eleventh; yes, sir.
Q. So you did not receive the letter until August, early in August, that correct?
A. About that.

By Mr. Hoskins:

Q. Captain, can you fix a little more definitely the date that you actually sailed on the next trip after you dry docked the "Fairland"? I would like to have you think for a moment and see if you can fix the exact date?

A. When we sailed from Mobile?

Q. Yes.

A. I think it was the following Thursday.

Q. Following what?

A. Following the fifth.

Q. The boat got in on a Monday?

A. Yes.

Q. And you sailed a week from the following Thursday?

A. I think so.

Q. That would be about the fifteenth?

A. About the fifteenth; yes, about that. I could not say definitely.

675 Q. You don't know whether it was before or after the thirteenth? Can you tell me whether it was before or after the thirteenth? Can you fix that much definitely?

A. It was quite a while ago, you know.

Q. Captain, you have testified to quite a few things on direct that were quite a while ago?

A. About the fifteenth is right.

Q. Then you went to New Orleans?

A. Yes.

Q. How long were you in New Orleans?

A. About eight hours.

Q. Is it customary, in sailing a boat, that you get ship mail from port to port?

A. At the office.

Q. Well, if the office wants to send you anything, they will send you something to a port where they know they can reach you and the members of the crew so that you could get letters?

A. Yes.

Q. It would not have been unusual for you to have gotten mail at New Orleans?

A. Yes.

Q. Do you remember getting any mail in New Orleans?

A. No letters.

Q. How long did it take you to get from Mobile to New Orleans?

A. Twenty-four hours.

676 Q. And you were there about eight hours?

A. Yes, sir.

Q. And it was actually about two or three days after you sailed from here that you left New Orleans, is that right?

A. No.

Q. Well, it was certainly into the second day?

A. Yes, sir.

Q. And then, depending on the hour of the day you left here, it may have been into the third day, might it not?
A. About thirty-six hours after we left here we sailed from New Orleans.
Q. And you got this when you got back sometime in August?
A. Yes.
Q. And after that date, then, your testimony as to what you did with reference to it applies to after sometime in August?
A. Yes.
Q. Now, that will apply not to that voyage, but to the voyage following, isn't that correct?
A. Yes, sir.
Q. In other words, you came into the port of Mobile sometime in August?
A. Yes.
Q. And then, how soon did you sail again?
A. About thirty-six hours after that.
677 Q. And then you started putting the letter into effect?
A. That is right.
Q. But you did let I. S. U. men board the ship, didn't you?
A. To collect dues.
Q. Did you send anybody around with them to see what they were doing?
A. No.
Q. How do you know what they did?
A. I don't know, I said to the best of my knowledge.
Q. But, as a matter of fact, you don't know?
A. No, sir.
Q. You don't know what they said to the individual men they talked to?
A. No, sir.
Q. And they were permitted to go and talk to the men, provided they did not interfere with their work?
A. Yes.
Q. And when you told the chief officer to follow the terms of the letter he did just that?
A. Yes.
Q. And you don't know whether they brought literature aboard or any printed matter?
A. No, sir.
Q. You don't know whether they just restricted themselves to the collection of dues?
678 A. No, sir.
Q. Now, Captain, you testified that you knew that a majority belonged to the I. S. U., that is a majority of the unlicensed personnel of the entire Waterman fleet?
A. Yes.
Q. What do you base your knowledge on; is it just your judgment?
A. On account of shipping from the Union Hall.

Q. You do not have any records?

A. No, sir.

Q. You do not know how many people the Waterman Steamship Corporation employs; unlicensed personnel?

A. No, sir.

Q. You don't know how many belong to the I. S. U.?

A. No, sir.

Q. In other words, your deduction as to whether it was over fifty percent, is just your vessel and not the entire fleet, is that right?

A. Yes.

Q. You have no records whatever?

A. No records whatever.

Q. Now, you said that you knew, when you sailed the "Fairland" on the fifth, just before you dry docked, that when you sailed that crew, you knew they were I. S. U. members?

A. They were supposed to be because they shipped out of the
679 Hall.

Q. You stated you knew they were?

A. Yes, sir.

Q. How did you know?

A. I said they came out of the Hall, that is all I know.

Q. You don't know whether they were I. S. U.?

A. No; they shipped out of the Hall, and that is all I know.

Trial Examiner SEAGLE. I don't quite understand what you mean by their shipping out of the Hall. You said that usually when you came in and the crew signed off, you signed them on again for the next voyage?

The WITNESS. Yes, sir.

Trial Examiner SEAGLE. You don't require a crew that is already on board a vessel to go to the I. S. U. Hall?

The WITNESS. No, sir.

Trial Examiner SEAGLE. It is only when you want new men that you go to the I. S. U. Hall, is that correct?

The WITNESS. Yes, sir.

Q. Then, it follows, Captain, that some of these men could have changed their union affiliation and you not know about it?

A. Yes.

Q. And you would sign them right on again?

A. I would not have known it.

Q. You would have permitted them to sign right on?

680 A. Yes.

Trial Examiner SEAGLE. It was not customary to ask a man, before signing him up again, to ask whether he changed his union.

The WITNESS. No, sir.

Q. When did you first find out that your crew had changed to N. M. U., Captain?

A. The night we sailed from Tampa, about eight-thirty.

Q. How did you find it out?

A. The chief officer came and called me, I was sleeping, he came and called me and said if I did not let a delegate, or whatever you call him, on the N. M. U. to come aboard he would pull the crew off, and as we were sailing in a half an hour or three-quarters of an hour afterwards, I thought it would be best to let him come aboard.

Q. And you did let him come aboard?

A. Yes, sir.

Q. And you found out that he had signed up books for practically your entire crew?

A. Yes.

Q. Now, you reported that incident to your headquarters, didn't you?

A. No, sir; I did not report it until we got to Mobile.

Q. And who was the man you reported it to?

A. I reported it to Mr. Ingram after we had paid off.

681 Q. After you had paid off?

A. Yes, sir.

Q. Not before?

A. No, sir.

Q. Your boat is equipped with radio, isn't it?

A. Yes, sir.

Q. Now, Captain, when did you get into Mobile with the "Fairland" from that particular voyage?

A. Eleven o'clock, July 5th.

Q. Eleven o'clock in the morning or evening?

A. Eleven a. m.

Q. Eleven a. m.?

A. About eleven a. m.

Q. And when did you pay your crew off?

A. About eleven-thirty.

Q. That morning?

A. Yes, sir.

Q. And were they paid off by the Shipping Commissioner?

A. By the Shipping Commissioner.

Q. At the signing of the articles?

A. Yes, sir.

Q. Do you know if they got their discharges at that time?

A. I don't know, sir. They was made out and given to them if they wanted them. They was on the table there. I don't know who was dishing them out at the time.

682 Q. You got in at eleven o'clock?

A. Yes, sir.

Q. When did you receive definite instructions to go into drydock?

A. I got a letter in Tampa saying that we were going into drydock upon arrival in Mobile, and to take her to the Alabama Dry Dock

Q. You got that letter in Tampa?

A. Yes, sir.

Q. Advising you to take it to the Alabama Dry Dock?

A. Yes, sir.

Q. Is that where you paid the crew off?

A. Yes, sir.

Q. And did you in that same letter receive instructions to discharge the crew?

A. No, sir; not in that letter; no, sir.

Q. You got those instructions when you got in here?

A. Immediately upon arrival; yes, sir; when we docked.

Q. You say it was immediately upon arrival. Do you remember whether or not it was before or after you reported to Mr. Ingram the incident over in Tampa?

A. That we killed her?

Q. No; when he told you to discharge the crew?

A. What was that question again?

Q. You stated that you got into Mobile on the morning of
683 July 5th?

A. Yes, sir.

Q. And it was after you got in that you reported to him that your crew had turned N. M. U.; is that right?

A. Mr. Ingram came aboard just as soon as we tied up to the dock, and told me to pay the crew off and shut the ship down.

Q. Is that when you told him?

A. No; I didn't mention it to him.

Q. Did he say anything to you about it?

A. No, sir.

Q. He did not mention the crew to you, one way or the other, except to discharge them?

A. That is all.

Trial Examiner SEAGLE. Is it customary for Mr. Ingram to come on board the ship as soon as it docks?

The WITNESS. Yes, sir.

Trial Examiner SEAGLE. He always does that?

The WITNESS. Every ship I have been on, since he has been port engineer; yes, sir.

Q. Your general custom is to sign the men off and on right away, if they are going to sail again?

A. Yes, sir.

Q. Can you tell us, Captain, any occasions where you have ever signed them off and not signed them on for twenty-four or thirty-six hours and worked them in the meantime?

684 A. I don't recall that.

Q. Do you always know, as soon as you get into port, when you are going out again, and where?

A. Yes.

Q. And you sign the men right back on?

A. Yes.

Q. And the Commissioner knows it so he can have articles right there and have everything ready?

A. Yes, sir.

Q. Have you ever had those plans changed?

A. Not on the ships I have been running; no, sir.
Q. You never had them changed?
A. No, sir.
Q. Captain, don't you know, as a matter of fact, the discharges were not ready for these men when your boat paid off?
A. Sir?
Q. Don't you know, as a matter of fact, that the discharges for the crew were not ready when your men were paid off?
A. All of them that was getting paid off was leaving.
Q. Don't you know some of them did not get their discharges for several days?
A. I don't know. She was going into drydock.
Q. You had been previously instructed that she was to be laid up?
A. No, sir.
685 Q. You thought it was the regular twenty-four hour lay-off?
A. Yes.
Q. And when did you learn that she was going to be laid up?
A. When Mr. Ingram came aboard.
Q. The laying-up plan, then, had been something that was contemplated in Tampa?
A. No, sir.
Q. It was something that came into existence after you sailed from Tampa and before you came to Mobile, is that right?
A. Yes.
Q. So as you sailed into Mobile, you and your officers contemplated making a rather quick voyage again, is that not right?
A. What is that?
Q. As you came into Mobile, you and your officers planned to sail as soon as you got through your twenty-four hour drydocking; it was nothing unusual?
A. Yes.
Q. And it was only after you got in here that you were informed by Mr. Ingram that you were going to be laid up awhile?
A. Yes.
Q. Does the Waterman Steamship Corporation have an office in Tampa?
A. Not at that time; they have agents there.
Q. Did you have occasion to report to the agent over there
686 the fact that your men had gone N. M. U.?
A. No, sir; I never went up town after that.
Q. Did any of your officers report it?
A. Not as I know of.
Q. You don't know?
A. No, sir. We sailed in forty-five minutes.
Q. You don't know whether they did or not, do you?
A. No, sir.
Q. Do you remember the specific instructions given to you by Mr. Ingram when he came aboard and told you you were to be laid up?

A. To kill the boilers and lay all the crew off, that we would be laid up for six or seven days.

Q. Did he tell you why?

A. No, sir.

Q. Do you know yet why the boat was laid up?

A. Yes.

Q. Why?

A. She was behind schedule and they shifted her back for a trip; she was behind schedule and they put her back to the next sailing.

Q. That is your understanding why she was laid up?

A. Yes.

Q. Is that the official reason, as you know it?

A. That is the only thing I can say.

687 Q. That is you have been so advised, is that correct?

A. Yes, sir.

Q. Captain, before the ship got into Mobile, haven't you already stated you contemplated a prompt voyage out again, and you told some of your men, didn't you, or all of them, that you were going into dry dock?

A. Yes, sir.

Q. And didn't you also tell them that the boat would be ready in a few days and they could sail again, if they wanted to?

A. I did not tell them anything. I told them the boat was laying up and the crew would be laid off.

Q. Don't you know that your officers asked the men if they wanted to ship again? Isn't it customary to ask the men?

A. I did not ask them, they ship to the I. S. U., and they have to go to the I. S. U. Union Hall.

Q. You have already told the Examiner on a prompt reshipment like that you don't call the Union Hall?

A. Not on prompt reshipment, no; but that was not a prompt ship.

Q. You don't make any distinction, when you are contemplating a twenty-four hour trip back, do you? You don't go to the I. S. U. Hall if your ship goes in for twenty-four hours?

A. No, sir.

Q. That is when you are contemplating prompt reshipment?

688 A. No, sir.

Q. In other words, it would have been a natural thing for your officers to ask the men to sail again?

A. No, sir.

Q. You don't remember asking any one person?

A. No, sir.

Q. And you don't know if the officers did ask them?

A. No, sir; I don't.

Q. So, if there is testimony that the officers did ask them, you would not contradict that?

A. I couldn't contradict it, I don't know.

Mr. Hoskins. That is all.

Trial Examiner SEAGLE. Do you wish to cross-examine the witness, Mr. Howard?

Mr. HOWARD. I would like to ask him several questions.

By Mr. HOWARD:

Q. I understood you to say, Captain Norville, that you did not tell Mr. Ingram what had occurred on board at Tampa, that is, that the men had changed from the I. S. U., their I. S. U. books to N. M. U. books, and you got your instructions to kill the boilers before you told him about that?

A. Yes.

Q. From what you know, as master of the ship, and from the operation and management of the ship, was the laying up of the "Fairland," or the dry docking, in anywise based upon the fact that you, as master, or anybody, had heard that the men had changed their union books.

689 Mr. HOSKINS. I object to the question. It is not clear.

Trial Examiner SEAGLE. Read the question.

(Question read.)

Trial Examiner SEAGLE. The question is perfectly clear.

A. No. sir.

Q. Captain, did any of these seamen, after being notified by you that the ship was going to lay up, did any of these men come to you, as master, and claim any preferential rights to go back on another voyage?

A. I don't remember, I don't remember them coming to me.

Q. Did any of those men that you heard of, as being connected with this matter before the National Labor Relations Board, at any time tell you, as master of the "Fairland," that they were going to demand an equal right to sail on your vessel, that is to say, to claim the same rights as members of the International Seamen's Union?

Mr. HOSKINS. I object to that question. I don't see where it has any relevancy.

Trial Examiner SEAGLE. Read the question.

(Question read.)

Trial Examiner SEAGLE. Objection sustained.

Mr. HOWARD. We accept.

Q. As far as you can remember, none of the crew who were discharged and paid off at Mobile ever made any complaint to you,

690 as master, that they were not notified or given any right to go out on a new voyage?

A. No, sir.

Mr. HOWARD. That is all.

Redirect examination by Mr. JOHNSTONE:

Q. Captain Norville, you said that after the ship came off of the drydock proper that it was then tied up in the yards for about six or seven days, I think. What yards were those?

A. We was in the Alabama, I mean Todd's, I think, four days, and then we laid up at Riverside Pier for the other remaining time we was in.

Q. And during those four days that you speak of, the ship was laid up in the yards of the drydock company?

A. Yes, sir.

Q. Captain Norville, Mr. Hoskins asked you about the effect of these articles that the men signed. Do these articles that the crew signs before they go on a voyage contain a contract of employment between the operators of a ship and the crew? In other words, are those articles the terms of employment of the crew?

A. Yes, sir.

Q. Do these shipping articles show the duration of the contract of employment?

A. Yes, sir.

Q. In the shipping articles of the "Fairland," on the voyage
691 of which we have been speaking, what was the duration of employment; that is, was it for one voyage or more than one voyage?

A. For one voyage from Mobile to New Orleans, Porto Rican Ports, and back to the final port of discharge in Mobile, Alabama.

Q. Is it your understanding, Captain Norville, that at the time the crew signs off and receives a discharge, signs a release under these articles, that that brings to an end the contract of employment which is included in those articles?

A. Yes, sir.

Q. Mr. Hoskins asked you if you had ever followed the practice of signing members of the crew on again as soon as you signed them off?

A. Right; yes, sir.

Q. You stated that you had?

A. Yes, sir.

Q. In each instance which you did that was that, or was that not a case where the ship was leaving port right away; in other words, it was coming in to load or unload and load and go right back out again?

A. I did not get that straight.

Q. (Question read.)

A. To go right back out again.

Q. In other words, you mean that you signed these men back
692 on immediately in the case of a prompt reshipment?

A. Yes, sir.

Q. Captain Norville, at the time you were in Tampa, did you know what Mr. Ingram contemplated as to the length of time that the ship would be on the drydock?

A. No, sir; I did not know it.

Q. You did not know what plans had already been made by Mr. Ingram until you arrived in Mobile?

A. Arrived in Mobile; yes, sir.
Mr. JOHNSTONE. That is all.

Recross examination by Mr. HOSKINS:

Q. Captain, you likewise don't know when Mr. Ingram may have nade or changed his plans, do you?
A. No, sir.
Q. You don't know whether he changed his plans fifteen minutes efore you got in, do you?
A. No, sir.
Q. He could have, as far as you know?
A. As far as I know.
Q. The Tampa to Mobile run is what, about thirty-six hours?
A. Thirty-six to thirty-eight hours; yes, sir.
Q. In answer to some questions put by Judge Howard, I believe ou stated that no one came to you to claim preference of employ-nent to sail again?
A. No, sir.
393 Q. That would have been very much out of the ordinary, for anyone to come to you, wouldn't it?
A. Yes, sir; they generally go to the mate.
Q. The mate is the one that hires the men?
A. Yes, sir.
Q. Captain, as a matter of fact, and as a Captain, do you not prefer o sail the same crew, if you have efficient men?
A. Yes, sir.
Q. It creates efficiency on the ship, doesn't it?
A. Yes, sir.
Q. Your men get acquainted with the ship, and get acquainted ith each other, and you get a better crew?
A. Yes.
Q. In other words, you much prefer to keep the same men?
A. Yes, sir.
Q. And that is true of all other captains?
A. Yes, sir.
Q. And the office of the union has tried to cooperate to give you the ame crews, if they can?
A. Yes.
Q. Even though the ship is laid up for quite awhile, and while ou haven't experienced this you may know, they tried to get the same en back on the ship?
A. I don't know what the union may do.
Q. But you never experienced it yourself?
4 A. No, sir; that was the first time I ever was laid up.
Q. Now, you stated that these articles are the terms of nployment, is that right?
A. Yes, sir.
Q. That is the terms of employment for the voyage?
A. Yes, sir.

Q. You don't understand that it was the final and complete and the only terms and conditions of employment between the company and the men, do you?

A. Sir?

Q. You don't understand the articles as being the final, complete, and the only terms of employment between the men and the company?

A. Yes, sir.

Q. Does not the company have rules which are not embodied in these articles?

A. Yes, sir.

Q. In other words, there is another understanding?

A. That is the understanding for the trip.

Q. That is just for the voyage?

A. Yes, sir.

Q. There is a distinct relationship of employer and employee, and outside of these articles the company has rules?

A. The company has rules and regulations, yes, sir.

Q. And the company suggests an awful lot of things about
695 employment that are not in these articles, isn't that true?

A. About these articles——

Q. Well, I don't know enough about the sailing of a ship to ask you these questions specifically. Do these articles refer to the number of watches the men should stand?

A. Yes, sir; it covers everything.

Q. Does it cover all the drills, and all of that?

A. No, sir; it is not written in there.

Q. That is a company rule, isn't it?

A. It is a government regulation, the life boat drill.

Q. It is a government regulation which the company adopts outside of these articles?

A. Yes, sir.

Q. How about the medical examinations of the men. The company examines the men?

A. The Marine Hospital, Department of Public Health examines them.

Q. The company is interested in that?

A. Yes.

Q. That is not contained in the articles?

A. No, sir.

Q. Now, I ask you, is there, as a matter of fact, a separate relation between the company and the men as employer and employee outside of these articles?

A. There is rules and regulations.

696 Q. The rules and regulations do that, don't they?

A. Yes, sir.

Mr. HOSKINS. That is all.

Trial Examiner SEAGLE. Do you have any questions, Mr. Howard?

Mr. HOWARD. Mr. Examiner, I have one or two questions I would like to ask him.

By Mr. HOWARD:

Q. You said, Captain, that it made for efficiency to employ the ame crew. Efficiency would also involve the question of discipline, ould it not?

A. Yes, sir.

Q. Now, would you tell the Trial Examiner, with respect to effiiency on board the "Fairland," assuming it was going out on anther trip, another voyage, and you had already had notice that if ou did not allow a delegate of the union, with which you had no ontract, to come on board, against the contract that you already ad, that they would strike and stop the ship from sailing, would hat promote the discipline or interfere with the discipline of the hip?

A. It would interfere.

Mr. HOSKINS. I object to that question and I move that the answer e stricken.

Trial examiner SEAGLE. On what ground?

Mr. HOSKINS. It is entirely incompetent and immaterial. There is no evidence that there was a strike threatened and there is no 97 evidence that the men so advised, and it calls for speculation.

Trial Examiner SEAGLE. Objection overruled.

(Question read.)

The WITNESS. It would interfere with it.

Examination by Trial Examiner SEAGLE:

Q. Well, you would not have a strike on a ship while it is at sea?

A. It was in Tampa.

Q. I say not while at sea?

A. No.

Q. So you, while you were on a voyage, you would not have a strike o matter whether you had men on six unions or two?

A. No, sir.

Q. I mean by that, if they struck you would put them in irons?

A. Yes.

By Mr. HOWARD:

Q. They already had you on notice that, although you had a conract with the International Seamen's Union, if you did not permit ie delegate of the National Maritime Union to come aboard that ip, that it would not sail from Tampa?

A. That is what the chief officer told me, the first mate.

Examination by Trial Examiner SEAGLE:

Q. I believe you said you sailed the "Fairland" three times, is that right?

98 A. Yes, sir.

Q. Were those three successive trips?

A. Yes, sir; three trips after the lay-up.

Q. You mean in July—do I understand you, then, to say that you ade two trips after July?

A. No, three trips after July.

Q. I believe you also said you sailed about forty times for the Waterman Steamship Corporation?

A. About forty trips; yes, sir.

Q. What would you say is the average rate of turn-over on a ship?

A. In the deck department?

Q. Yes, all departments.

A. On the ships I have been on, about fifty percent in the deck department.

Q. How about the other departments?

A. Well, the Steward's department sometimes none get out of the Steward department.

Q. You mean in the steward department they ship one hundred percent, as a rule?

A. Yes.

Q. How about the engine department?

A. It would amount to about fifty percent.

Mr. LUSTIG. Is that per year, Mr. Examiner, the normal rate of turn-over per year, per month, or per voyage?

699 Trial Examiner SEAGLE. Well, per voyage.

The WITNESS. Per voyage.

Q. How often do members of the same crew continue to sail the same boat? I mean what is the longest period of service that you know of?

A. Well, I have had as high as two years.

Q. You have had the same crew sailing the same boat for as long as two years?

A. Yes, sir.

Q. And some of the boats you have sailed you haven't had all of them for at least two years?

A. Yes.

Q. Is that the longest period you have ever sailed a particular ship?

A. Yes.

Q. Two years?

A. Yes.

Q. In terms of percentage, what would you estimate it to be?

A. Well, on that ship——

Q. What ship was it, by the way. What ship did you sail for two years?

A. The "Fair Isle."

Q. How many members of the crew were with you throughout the two years?

A. Four sailors.

700 Q. And what percentage of the total crew was that?

A. About sixty percent.

Q. What other boat did you sail for a long time?

A. Well, every ship I have been on I have sailed over a year.

Q. At least a year?

A. At least a year; yes, sir.
Q. Now, on those ships what percentage of the crew remained with ou throughout your period of service?
A. Well, I would say about fifty percent.
Q. Now, the four members of the crew of the "Fair Isle," how id they stay on board the boat after you surrendered the command?
A. I was not in command, I was chief officer.
Q. Now, when you left the ship, did these four members of the rew remain?
A. They remained.
Q. And they may have continued to work?
A. Yes, sir.
Q. From your general experience, is it at all unusual for members f the crew to work for a company a great many years on the same oat?
A. Yes.
Q. You would not say that is unusual?
A. No, sir.

Redirect examination by Mr. JOHNSTONE:

Q. I just wanted to get this straight. Did you mean that our sailors would include sixty per cent of the entire crew?
A. No, sir; that is the sailors, the deck department.
Q. How many sailors did you have on that voyage in that depart- ent?
A. Six sailors.

Examination by Trial Examiner SEAGLE:

Q. Then, I will ask you this: how many of the personnel in the ther departments remained the same, the steward and the engine oom?
A. I have never had to check up.
Q. Give us your best recollection, I don't expect you to have an xact memory.
A. In the steward department there was one fellow on for two ears, who was a mess boy, and the chief cook and the steward was n her all the time I was on the ship, and one mess boy.
Q. How many were there in the steward department?
A. Five in the steward's department.
Q. And you say two or three of them were there during the whole eriod?
A. Yes, sir.
Q. Now, how about the engine-room department?
A. I do know one fellow was on there for the two years I was on there, and he was an oiler, and the rest of them——
Q. You say two oilers?
A. One oiler.
Q. How many were there altogether?
A. Six or seven.

Q. What years was it that you sailed the "Fair Isle"?
A. '35 and '36.
Q. Now, the members of the crew of the "Fair Isle" could have continued to work for the Waterman Company even though they did not belong to the International Seaman's Union; isn't that true?
A. Yes, sir.

By Mr. JOHNSTONE:

Q. Captain Norville, at the time the "Fairland" came into Mobile, in July 1937, and the entire crew was laid off, is it not a fact that there were some members of that crew who had not changed to the N. M. U. and were still members of the I. S. U.?
A. Yes, sir.
Trial Examiner SEAGLE. How do you know that?
The WITNESS. Just by hearsay, I haven't got any records.
Trial Examiner SEAGLE. I mean, you do not usually investigate the union affiliations of the crew?
The WITNESS. No, sir.
Trial Examiner SEAGLE. Then, you are merely speaking from general rumor.
703 The WITNESS. Hearsay, yes.
Mr. HOWARD. May I ask one other question, Mr. Examiner?
Trial Examiner SEAGLE. Very well.

By Mr. HOWARD:

Q. You spoke awhile ago, Captain, of the fact that when it came to making a new voyage, that the men on the ship who had been members of the crew, had some sort of right, by the custom of the sea, to make another voyage if they had been good members of the crew?
A. Yes, sir.
Q. Now, I want to ask you whether or not it is not a fact that the master is the one who has the final choice as to what members of his crew he shall take along on his second voyage?
A. That is right, he has absolute choice to do it.
Q. He has absolute choice?
A. Yes, sir.
Q. And there are no rules or regulations of the Waterman Steamship Corporation that would limit your right, except your contract to ship out men from the union hall?
A. Yes, sir.
Q. Now, I want to ask you if it would affect your judgment, as a master of the boat, and, if so, how it would affect it, if you had signed up a crew, and assuming that they were all good men, but some members of the crew, while out on that voyage, had joined the National Maritime Union; how would that affect their
704 supposed right, if any, to go back on another voyage, in your judgment, now, as master of the ship?
Mr. HOSKINS. I object.

Trial Examiner SEAGLE. Can you answer that question?
The WITNESS. I want him to read it over for me.
Trial Examiner SEAGLE. Will you read the question, Mr. Reporter?
Mr. LUSTIG. May we, in the meantime, raise objection?
(Question read.)
Trial Examiner SEAGLE. The question I asked you is can you answer that type of question?
The WITNESS. No.
Trial Examiner SEAGLE. Your answer is you cannot?
The WITNESS. No.

Recross examination by Mr. HOSKINS:

Q. Captain, when the "Fairland" went into dry dock and was tied up for repairs in July, this incidence that we have been discussing all the way through, what happened to the officers?
A. The officers stood by and one engineer quit, and he was not replaced until the ship took a new crew.
Q. The other officers remained under employment?
A. They stayed on board as watchmen.
Q. Did they all stay on board?
A. Yes.
Q. Where did they have their meals?
705 A. Up town.
Q. But they were paid for?
A. Yes.
Q. At the time this boat was in dry dock, or at the time it was in these yards that you are talking about, that is the word, isn't it, yards?
A. Yes.
Q. At the time it was in those yards it had to have placed on it a skeleton crew—I am not technically going into dry dock yet.
A. The warehouse man was out an hour.
Q. And who stood by?
A. The mate and engineer.
Q. You didn't need any seamen at all?
A. No, sir.
Q. How many men does that make, mates and engineers?
A. Seven; eight counting the captain.
Q. Now, in all your experience with the Waterman Steamship Corporation have you ever heard of another case where the entire crew was laid off?
A. Plenty of them; yes, sir.
Q. Will you name some of them—my question is the entire crew?
A. I don't know about the entire crew.
Q. That is my question. Have you ever heard of another
706 case where the entire crew was laid off?
A. No.
Q. You never have heard of it?
A. No, sir; I can't say.

Q. Those cases you spoke of were not the entire crew?
A. No, sir.
Mr. Howard. I would like to put the question he says he cannot answer. I would like to put the question in another way, and I think the Captain can answer it——
Mr. Hoskins. I object.
Trial Examiner Seagle. Objection sustained. Are there any further questions to the witness?
(No response.)
Trial Examiner Seagle. The witness is excused.

Norman Nicolson, a witness called by and on behalf of the Respondents, resumes the stand and testified further as follows:

Cross examination by Mr. Hoskins:

Q. Captain Nicolson, do you have the information which was requested of you now?
A. I got the information which was requested last night.
Q. By the Trial Examiner last night?
A. Yes, sir.
Q. You have it with you?
A. Yes.
707 Mr. Hoskins. Do you want to put that in evidence before I carry on with the cross examination?
Mr. McCorvey. Yes.
In connection with the testimony of Captain Nicolson, we offer in evidence a typewritten statement prepared by Captain Nicolson, at the request of the Examiner, showing the time that each member of the crew of the "Fairland" and the "Bienville" worked in the shop during the months of July and August, 1937. Is that correct?
The Witness. Yes.
Trial Examiner Seagle. I believe they are all July.
The Witness. No, some of them are in August.
Trial Examiner Seagle. You mean they run over into August?
The Witness. Yes.
Trial Examiner Seagle. You mean they all started working in July?
The Witness. Yes.
Trial Examiner Seagle. The last column in this exhibit, however, also in the cases the present employment of the men listed in the first column, doesn't it?
The Witness. Yes.
Mr. McCorvey. And which statement also shows the present location of these various seamen, and the employment of these various seamen.
Trial Examiner Seagle. Of course, these are vessels you
708 operate, which are indicated in the column "Present location"?
The Witness. Yes, except the "Pan Royal," which is owned by another company and is under contract with the I. S. U.

Trial Examiner SEAGLE. The "Pan Royal" is not owned by you?

The WITNESS. No, sir; it is operated by the Pan Atlantic Steamship Corporation, a Delaware Corporation, and the Waterman Steamship Corporation is an Alabama corporation.

Trial Examiner SEAGLE. What is the connection between the two corporations? Is it is a subsidiary?

The WITNESS. No, sir; it is not a subsidiary. We have the same offices, but different stockholders.

Trial Examiner SEAGLE. What percentage of the stock of the Pan Atlantic is owned by the Waterman Steamship Company?

The WITNESS. The Waterman Steamship Company does own some stock in the Pan Atlantic.

Trial Examiner SEAGLE. How much?

The WITNESS. The Waterman Steamship Company and their directors own a controlling interest.

Trial Examiner SEAGLE. The Corporation, as such, and its directors, own a controlling interest?

The WITNESS. The Waterman Steamship Company and the officers of the Waterman Steamship Company own a controlling interest in the Pan Atlantic.

Mr. MCCORVEY. What is the percentage owned by the Watertown Steamship Company?

709 The WITNESS. I don't know without looking up the record.

Trial Examiner SEAGLE. I notice in that last column, under present location, with reference to A. C. King, Georgetown, S. C. Is that the name of a boat?

The WITNESS. Georgetown, South Carolina, the name of a town.

Trial Examiner SEAGLE. What does it mean; does it mean that the man is now working in Georgetown?

The WITNESS. I don't know. We maintain a service there, but I don't know whether he is working for us.

Trial Examiner SEAGLE. I was not interested in the whereabouts of these men if they were not working for the Waterman Steamship Corporation.

Just what does the listing "Georgetown" mean?

Mr. MCCORVEY. That is where he is located now.

Trial Examiner SEAGLE. It does not necessarily mean he is working for you?

The WITNESS. It does not necessarily mean that he is working for us.

Trial Examiner SEAGLE. You do have knowledge, then, of his whereabouts?

The WITNESS. I did not prepare this. I had it prepared from our records.

Trial Examiner SEAGLE. What I want to know is whether they are employed on ships operated by the Waterman Steamship

710 Corporation. Where the listing is on a ship, does that mean that the man is employed on that ship at the present time?

The WITNESS. Yes, sir.

Trial Examiner SEAGLE. Now, with reference to J. Gilroy, is he employed on one of your ships or is he just working for the light-house service?

The WITNESS. He is working for the United States Government at this time.

Trial Examiner SEAGLE. Is there any objection to the admission of this in evidence?

Mr. HOSKINS. I have no objection to this statement as it exists. However, I do not believe that it contains the information the Examiner requested, because there are other men who are working for the Waterman Steamship Company who did not work on their docks during the period there.

Mr. MCCORVEY. Did not work on their what?

Mr. HOSKINS. On their docks. The Examiner asked for a list of the men who are named in the complaint, who are now employed by the Waterman Steamship Company and this statement here does not give it to him.

Trial Examiner SEAGLE. Are you referring to the present employment in the shop?

Mr. HOSKINS. No; I am referring to the present employment on vessels.

Trial Examiner SEAGLE. I understand this to give the present employment on vessels.

711 Mr. HOSKINS. But, Mr. Examiner, this is not a complete list, because there are a great number of the men who are named in the complaint who never worked in the shop, and this is a list of men who worked in the shops.

The WITNESS. We have other men who never were interested in employment in the shops.

Trial Examiner SEAGLE. I asked you to prepare a list of the men listed in the complaint. That is not complete.

The WITNESS. You mean a complete list—this is a list of the men working in the shop——

Trial Examiner SEAGLE. Well, will you prepare an exhibit with all of the men listed in the complaint, and showing their present employment by the Waterman Steamship Corporation?

The WITNESS. Yes, sir.

Trial Examiner SEAGLE. The document will be received in evidence as Respondent's Exhibit 19.

(Thereupon, the document above referred to was received in evidence and marked "Respondent's Exhibit 19.")

Mr. MCCORVEY. Now, Mr. Examiner, we next offer in evidence, as part of Captain Nicolson's testimony, a statement which I understood the Examiner requested, giving the number employed in the Waterman shops, the warehouse shops of the Waterman Steamship Company, for each day from July 1st to August 15th, 1937.

Trial Examiner SEAGLE. Is there any objection?

712 Mr. HOSKINS. Well, I raise objection to the statement because I doubt very much that it is what is asked for. I know for

mple that on August 1st there were three men employed. Can it sibly be, Captain, that in all of your shops only three men were ployed?

The WITNESS. Yes; I think if you will look at the calendar I had will note July 4th six men, July 5th seven men—you will find t August 3rd was a Sunday and we endeavored not to work our n Sunday.

Mr. HOSKINS. But you do hire men by the month?

The WITNESS. Some by the month, some by the week, and some by hour.

Mr. HOSKINS. But your weekly men work Sunday?

The WITNESS. No, sir; our weekly men are off Sunday.

Mr. HOSKINS. But they still would be in your employ.

Trial Examiner SEAGLE. There is no doubt that this exhibit shows t on Sundays there were as few as five or six men employed.

The WITNESS. July 4th was a Sunday, and the fifth was also a iday. On the eleventh, a Sunday, we had sixteen men, and the lowing day we employed 237. The eighteenth was a Sunday and had eighteen men, but on the nineteenth we employed 225. On twenty-fifth we worked six men.

Trial Examiner SEAGLE. Proceed.

Mr. HOSKINS. That, the title is misleading, it says, "Number of men employed in warehouse each day."

Trial Examiner SEAGLE. Why is that misleading?

Mr. HOSKINS. Because they are salaried employees and are just much employees as anyone else.

Trial Examiner SEAGLE. I was interested purely in the number on iven day, that is all. I think the exhibit states that. The docunt in question is received in evidence as Respondent's Exhibit 20.

(Thereupon, the document above referred to was received in evince and marked "Respondent's Exhibit 20.")

Mr. MCCORVEY. Exhibit 20 does not include the number of the nthly salaried men, amounting to approximately six men, such as ctricians and others who are paid by the month but who have ndays off. It only includes the men paid by the hour, employed the hour.

Trial Examiner SEAGLE. We will recess until 1:45.

(Thereupon, a recess was taken until 1:45 o'clock p. m.)

AFTER RECESS

(Whereupon the hearing was resumed, pursuant to recess, at 1:45 ock p. m.)

Trial Examiner SEAGLE. The hearing will come to order.

NORMAN NICOLSON, the witness on the stand at the time of taking the recess, resumed the stand and testified further as follows:

Cross-examination by Mr. HOSKINS:

Q. Captain Nicolson, when you were broke off this morning on your cross-examination, in order to permit Captain Norville to testify, you were discussing, generally, the procedure, particularly watermen's procedure when boats are tied up for repair or go into drydock. Is that your recollection of where we were?

A. I think so. I would like it if the Reporter would read back the last question and answer.

Trial Examiner SEAGLE. Will you read the last question and answer?

(Record read.)

Q. Captain, you say you have no custom on it?

A. That is correct.

Q. Now, you have testified that quite a few of your boats have gone in for repairs or gone into drydock within the last year or year and a half, is that not right?

A. That is correct.

715 Q. Whether you call it custom, or whether it is specific procedure in each case, is it not true that on the "Bienville" and "Fairland" and the "Pan Kraft," those were the only three ships, to the best of your recollection, where the entire crew was laid off?

A. No, sir. During our noon hour I looked up some of our records and I now have records prepared to show that we have had certain vessels in here laid up with three men looking after three vessels, and we had one in here during the past year with only two or three men by her.

Q. Captain, are you restricting your research to those cases where you did not keep the crew?

A. Yes.

Q. Or are you going to give us all ships that you put in, and tell us which ships you did keep the crew and on which ships you did not keep the crew?

A. I will give you the record of our layoffs.

Q. All boats?

A. Yes, of active vessels we keep the full crew up all the time.

Q. What do you mean by an active vessel, Captain?

A. A vessel that comes right in—in other words, an active vessel is a prompt vessel, a vessel that comes right in, discharges one cargo and immediately re-loads another cargo.

Q. Without going up for repairs?

716 A. Without going up for repairs.

Q. In other words, there is no discussion or difference between us on the question of whether the crew is kept if the ship is going right out again?

A. No, sir; we keep the full crew by all the time.

Q. And the same crew sails all the time?

A. Not necessarily. If they are satisfactory to the officers on the vessel, and they are satisfactory to us, and do not care to leave of their own accord.

Q. That is correct; I am willing to recognize those three principal points. If you are satisfied with them and they want to sail, you sail them again?

A. Yes.

Q. You don't go back to the union hall and follow the rotation list?

A. Not if they don't leave the vessel.

Q. Now, we were discussing the work that was done on the "Bienville," and I think our questions before were limited to the "Bienville," and I think you testified that a great deal of the work which was done was work which the crew could do?

A. That is correct.

Q. And which, in at least some cases on your line, the crew had done?

A. At times we worked fifty or seventy-five seamen in our shops doing ordinary labor work.

717 Q. And at times you kept the whole crew down on a boat to do that repair work?

A. When a vessel lays up for any period of time, like the "Bienville," we rarely keep the full crew.

Q. But you have had occasions, however, where the entire crew was kept while the boat has been up for repairs?

A. I don't think we would have a full crew stay on any ship that is laid up for repairs as long as the "Bienville." It would be a skeleton crew, but not full crew.

Q. In any cases where you did not have the full crew, is this due to the fact that the seamen have asked to resign?

A. Not necessarily.

Q. And you have not replaced them?

A. Not necessarily; no, sir.

Q. That is a major factor; isn't it?

A. No; it is not.

Q. If a ship is in port and a man quits the ship, you very seldom replace him until you are ready to actually sail again?

A. Yes; we have worked as many as thirty seamen, thirty able seamen on one ship, where ordinarily at sea we only carry eight or nine seamen. It all depends upon the condition of the vessel and the kind of work we are going to do on her.

Q. Well, in your experience, there are certain cases where work—we won't at the present time discuss the number of cases—

718 but there are certain cases where there is plenty of work for the seamen to do, and you have actually kept the seamen doing that work?

A. That is correct.

Q. Now, I am a little confused as to why the seamen on the "Bienville" did not do the work. In other words, is it—you testified yes-

terday, I believe, and correct me if I am wrong in this, that due to the fact that steam was down, and the sanitary conditions were not in order, that you could not keep the crew; is that correct?

A. That is correct.

Q. Now, is that the reason why the crew of the "Bienville" did not work?

A. The crew of the "Bienville" did work by the "Bienville"; did certain work within their capacity to do, but they were——

Q. Captain, you mean by that these men just named on the statement here?

A. Yes, sir.

Q. Which is not the full crew?

A. It is all of the crew of the "Bienville" who applied to us for work in our shops.

Q. Yes; but you do not mean that you made an offer to the full crew to continue working; do you?

A. I believe I did.

Q. You made an actual offer?

A. I did not make it personally, but my men got word
718 around that if any of the "Fairland" or "Bienville" crew wanted to work through our shops on the "Bienville," there was employment there for them.

Q. You say they got word around. You don't know what process they used?

A. No, sir.

Q. You don't know whether they contacted each man individually, do you?

A. No; but I believe that some of my men can testify to that.

Q. But you don't know?

A. I was told.

Q. Well, that contacting was done, as you understand it, not at the time they were discharged, but subsequently; isn't that right?

A. I don't know whether it was done the day they were discharged or the day after or several days after.

Q. You are not clear on that point at all?

A. I am not clear on that point.

Q. And some of the crew did work by going in and hiring through your shops?

A. That is correct.

Q. I still haven't got the one difficulty in my own mind cleared up. I think my question was, was it due to these sanitary conditions
720 that you did not keep the crew on board and work them?

A. The main reason we laid the crew off the "Bienville" was due to the extensive repairs of a bad nature on the vessel. We worked sixteen to eighteen hours a day on the "Bienville." You cannot work twenty-four hours a day on a ship, doing riveting and hoisting gear on board, and sleep men on that vessel at the same time; and we also killed the steam, it was the summer time, and we could not have given the men any comfort.

Q. That is the point I am asking you. Was it due to the fact that you killed the steam, and due to the fact that your boat was not in mechanical operation, so far as sanitary conditions were concerned, that these men did not stay by and work?

A. That is correct.

Q. That is the reason?

A. That is the reason. I could answer it further, if I may, and I could say the crew of the "Bienville" was not laid off because they changed their unions.

Q. Well, that is your conclusion, and it is in the record, but my question is, is that the reason, mainly, that the sanitary conditions were not operating?

A. And the nature of the work.

721 Q. Now, is it usual or unusual for that situation to exist, I mean with reference to the sanitary conditions, when a boat is up for repair?

A. Some boats are up for repair, and we keep steam on them all the time.

Q. I am asking you if it is the usual factor there, usually do they have steam on or usually don't they have steam on?

A. I should say if a ship is going to be in for repair more than two or three days we will kill the steam.

Q. But I am asking you, Captain, though, in your experience——

A. It is based on the nature of the work that is done on the vessel.

Q. Let us take the last year, the boats you put up in the last year?

A. Some vessels were——

Q. During the past year you have put certain boats in drydock or laid them up for repairs?

A. Yes, sir; that is correct.

Q. That is the fact?

A. Yes.

Q. Now, what is your best judgment as to the percentage where the steam was cut off?

A. If the vessel laid up for any length of time——

Q. No, Captain, I just want the percentage factor?

A. I cannot give you the percentage factor, but if I can answer it in my own way I think I can make it clear.

722 Q. Captain, you want to explain why you do and when you do not?

A. Yes.

Q. That would not give us any light. I want you to tell me what is the general relationship, if you can give me the approximate number of times when you shut steam off and the approximate number of times when you have not. That is what I want.

A. I cannot answer that without referring to my record.

Q. You are not prepared to state, are you, that it is the customary practice to keep a crew—you are not prepared to state that it is a customary practice not to keep the crew?

A. I am prepared to state——

Q. Did you hear my question?

A. I heard your question.

Q. Are you prepared to state one way or the other on that?

A. Yes, sir.

Q. Now, which is the customary practice?

A. It is not customary to keep the full crew by a vessel when she is in, laid up in our home port at Mobile, very long, which is the home port of the Waterman Steamship Corporation.

Q. I asked you before, is it customary to fire the whole crew——

723 Mr. HOWARD. Mr. Trial Examiner, may I, as intervernor, object to that question upon the ground that it assumes that when a man has finished his articles and completed his contract and signed off the vessel, that unless he is kept he is fired, which I think is not the legal conclusion——

Trial Examiner SEAGLE. Objection overruled.

Mr. HOWARD. Exception.

(Last question read.)

A. If it is at all possible we endeavor never to fire a man.

Q. Captain, which is customary now, is it or is it not?

A. It is customary to lay off a portion of the crew, and sometimes the whole crew when a vessel is in for a length of time.

Q. Is it customary to lay off the whole crew?

A. In certain cases, yes, sir.

Q. Will you say in the past year or year and a half that it has been the custom of the Waterman Steamship Corporation to lay off the entire crew when a boat goes up for repairs, stopping the question right there?

A. We have in four or five cases——

Q. Captain, my question is, is it customary, please.

A. No.

Q. It is not?

A. Not the whole crew, a portion of the crew.

724 Q. Then, if your answer filed in this case, as signed by you, states that these men were laid off when the boats went into drydock, and that such is the usual and customary procedure, then is nullified, is that correct?

A. No, it is not.

Q. Then, how can you explain the situation?

A. We have operated these ships for nineteen or twenty years. During the past year and a half we have been very busy. The "Bienville" was an unusual case coming along. She was in bad condition, as I explained, and it is customary practice, in vessels like the "Bienville," that were operated over a long period of years, to lay off the crew——

Q. But, if your answer says, reading, in part, from the middle of paragraph four on page three of your answer: "That the contract of employment of the crews of both of the said vessels terminated, as is usual and customary in such cases, when the said vessels were laid up for repairs or went on drydock." Is that answer correct?

A. That answer is correct. I swore to that answer.

Q. Then, is your testimony that you have just stated, that it is not the customary procedure, is correct?

A. No sir; that is not. That answer and that statement is correct, and I also might answer, is the custom——

Mr. Hoskins. Mr. Reporter, will you read back several of the questions?

(Record read.)

725 Q. And you are not able to perceive any discrepancies in the testimony you have just given and the written answer?

A. As I tried to get in my answers——

Q. No, Captain; my question is, do you or do you not perceive any discrepancies?

A. If we had only another vessel working tomorrow——

Q. Captain, please, I hate to keep interrupting you here, but I have to. I want to keep the issue straight, and the only way is, by you, to limit your answer to my question. My question is do you perceive any discrepancy between the oral testimony which you have just given and the portions of the written answer I read a moment ago?

A. No, sir.

Q. You do not perceive any discrepancy there?

A. No, sir.

Q. Captain, I believe you gave a definition yesterday of prompt reshipment?

A. Yes.

Q. What was your definition of prompt reshipment?

A. Immediate reshipment.

Q. What is your definition of immediate reshipment?

A. Where a crew is paid off and signed on within twenty-four hours after they are paid off.

Q. Where they are signed on within twenty-four hours?

A. Yes.

Q. The number of days the vessel remains in port makes no

726 difference?

A. No, sir.

Q. What would you say, then, if circumstances were such that the men were not signed on for thirty hours, that would not be prompt reshipment?

A. In shipping circles a prompt vessel is a vessel which is ready to load within twenty-four hours.

Mr. Hoskins. Mr. Reporter, will you read my question?

(Question read.)

The Witness. I would call thirty hours prompt reshipment.

Q. Would you call thirty-six hours prompt reshipment?

A. Yes, I would call thirty-six hours prompt reshipment, but not more than thirty-six hours.

Q. Thirty-six and a half hours would not be prompt?

A. Well, I am not an authority on English, and I would take prompt to mean exactly what the dictionary says.

Q. Captain, I understood on direct examination yesterday that you stated unequivocally that prompt reshipment had a very definite and clear meaning in maritime circles.

A. A prompt vessel.

Q. We are talking about prompt reshipment, not prompt vessels.

A. A prompt reshipment would be in twenty-four hours.

Q. How about thirty-six hours?

727 Examination by TRIAL EXAMINER:

Q. I don't quite understand your answer. Are you now stating that, in your opinion, prompt reshipment means within twenty-four hours?

A. Yes.

Q. But another seagoing man might think it means forty-eight hours?

A. That is correct.

Q. You would not say he is wrong?

A. No, sir.

Q. And some other captain might think it means thirty-six hours. Would you say he was wrong?

A. He was wrong.

Q. You are giving your opinion today?

A. Yes.

Q. Now, I think the question, which was put to you, envisages this problem. Whether there is any general understanding among shipping men as to what prompt reshipment means?

A. In shipping circles, in chartering circles, there is, when you are chartering a vessel for prompt shipment, there is an understanding there that she will be ready in twenty-four hours.

Mr. HOSKINS. Mr. Examiner, I don't think that is the question.

728 Q. You are referring to a vessel that will be ready?

A. Yes.

Q. Do I understand you to say that the term "prompt reshipment" is used in shipping contracts?

A. Yes, sir; very extensively.

Q. Now, what, exactly, is the language of the clause?

A. In the event you wanted to charter a vessel, or someone was going to charter your vessel, they would ask you if you got a prompt vessel.

Q. Now, that is a different expression from "prompt reshipment." "Prompt vessel" and "prompt reshipment" are not the same thing.

A. They are both prompt.

Q. Do they relate to a difference situation?

A. My definition of "prompt" is twenty-four hours.

Q. That is your opinion or interpretation?

A. Yes.

Q. You are not asserting that that is the universal interpretation?
A. No, sir.
Q. By the way, can you produce any shipping contracts in which
at expression was used? Will you say it was standardized to the
tent that it is reduced to a form?
A. It is standardized in chartering vessels.
Q. Well, if it is standardized aren't there forms available,
29 form contracts?
A. We have forms for charter parties, but when you use
prompt" it is used in all sorts of codes where chartering is used.
Q. Will you answer my question? Do you have a form contract
vailable where the expression is used?
A. No, sir; I have telegrams.
Q. Can you produce any form of contract?
A. I can produce telegrams.
Q. Have you ever seen that expression in any form of contract?
A. Form?
Q. Yes.
A. No; I have seen it used in discussions leading up to making
ntracts.
Q. You mean discussions among shipping men?
A. Yes; leading up to the making of a contract.
Q. But they never used the expression in the contract?
A. No, sir.
Q. The contracts you have been discussing are shipping contracts?
A. Shipping contracts.
Q. Have you ever seen the expression "prompt reshipment" ever
ed in a labor contract?
A. I have seen it in a contract we have.
0 Q. Have you ever seen it before that contract?
A. I don't think I have.

By Mr. Hoskins:

Q. Captain, if yesterday, on your direct examination you stated
at the definition of prompt reshipment is a clear, understandable
finition in maritime circles, you really meant that was your judg-
ent?
A. That is correct.
Q. Now, do you think of any other statements or definitions you
ade in your testimony on direct that should be qualified today?
A. No, sir.
Q. While we are on the theme of definitions, captain, I believe you
ve a definition of "home port" and also stated that that had a very
ar and definite understanding in maritime circles, is that correct?
A. I don't remember giving any definition of "home port."
Q. If the testimony that has been taken down shows it——
A. The home port is the hailing port of the vessel where her per-
nent documents are used.

Q. Don't you remember stating yesterday that there was no dispute, and in fact that the home port was the port where the papers of the vessel were registered?

A. That is correct.

Q. And that was clearly understood by everybody in maritime circles?

731 A. Well, home port——

Q. Don't you remember stating that?

A. I guess I do; yes, sir.

Q. Captain, I would like to show you your contract with the International Seamen's Union, the same contract that has been introduced in evidence here, and refer you particularly to page 6, article 4, section 1, subparagraph (d), which states as follows:

"Home port shall be considered to be the port at which shipping articles are opened, or the port at which crew is paid off upon completion of voyage."

Now, do you say that that definition is wrong?

A. That definition is wrong, in accordance to law, yes.

Q. In accordance with your understanding?

A. Yes; and in accordance with law.

Q. What do you mean "in accordance with law?"

A. So far as Waterman's is concerned, all articles are opened and closed in Mobile, and the home port of our vessels is Mobile, Alabama.

Q. We are not interested in your case. You made the unequivocal statement that the home port is such and such, and this has a definite meaning for home port. Now you tell me that is wrong, as a matter of law?

A. Yes, sir.

Q. What do you mean, as a matter of law?

732 A. The home port is where the permanent documents of the vessel is issued.

Q. When you say as a matter of law, what law do you mean?

A. Maritime law.

Trial Examiner Seagle. Do you mean by that that there is a statute which defines what the home port of a vessel is?

The Witness. Yes.

Q. And does that same statute define that home port should not be used in any other sense?

A. Not that I know of.

Q. You signed this contract, didn't you, captain?

A. Yes, sir.

Q. And you signed it knowing that that definition of home port is wrong?

A. That definition of home port applies only to a certain group of rules.

Q. Do you admit that it is a valid definition of home port?

A. I do.

Q. Then, you don't mean to contradict the previous witnesses who were on the stand, and who gave testimony as to the status of home port, do you?

A. That is not the correct meaning of home port.

Q. Captain, you just stated it is, haven't you?

A. Yes; to observe certain working conditions.

Q. Well, whatever purpose it is, home port has a definite
733 meaning, is that right?

A. Yes.

Q. And gefore you got on the stand two or three witnesses gave a definition of home port?

A. Yes, sir.

Q. And if you contradicted them yesterday in giving your unequivocal definition, which today you admit is your judgment, you do not mean now to let that contradiction stand, do you?

A. What is that?

Q. In other words, do you deny the definitions that the previous witnesses gave of the term "home port"?

A. I say home port——

Q. Well, do you deny that their definitions are correct? You can answer that yes or no.

A. Yes.

Q. You say they were not correct?

A. That is correct.

Q. And yet you say that this definition is correct?

A. I would say that was correct. I said it was not correct so far as home port is concerned according to the Navigation Laws of the United States.

Q. Captain, I believe you stated yesterday that the "Fairland" arrived in Mobile during the holidays?

A. Yes; I think she arrived around the 4th or 5th of July.

Q. And for that reason she was closed down, and I gathered
734 from your testimony, and tell me if I am wrong on it—that at holiday travel time there is not much business?

A. That is correct.

Q. And the boat was, accordingly, closed down?

A. Yes, sir.

Q. And the reason the steam was shut down and these men laid off was for economic reasons?

A. That is correct.

Q. Haven't you stated today that all of your boats are operating now? That this is one of your best shipping seasons?

A. Right now; yes.

Q. And hasn't this whole year been one of your best years?

A. Our bad months are during the summer time, June, July, and August.

Q. But, haven't June, July, and August of this year been better than June, July, and August of last year?

A. About the same.
Q. Haven't they been much better than the year before?
A. Yes.
Q. And exceptionally better than 1930, 1931, and 1932?
A. Yes.
Q. You haven't had any trouble getting cargoes this year, have you?
A. Yes, we have. At times Porto Rico has been quiet, and
735 our foreign service has been quiet.
Q. But your boats have been kept running?
A. They have been kept running, but on several occasions we have missed sailings.
Q. The boat arrived on the 5th of July, did it not?
A. Yes, sir.
Q. When was it finally closed down?
A. I was out of town at the time; I was not in the city of Mobile at the time the "Fairland" arrived.
Q. Well, then, captain, will you tell me the source of your information that she was closed down for economic reasons? Was that pursuant to instructions which you had left?
A. Yes, sir.
Q. When did you leave town?
A. I think I left the third of July and the "Fairland" was a few days late from schedule, and to get her back on her schedule it would have caused a lot of excessive overtime, and we decided to put her back a week on schedule, that is, we missed sailing the following week, and we decided that when she came in for a dry-docking, we would kill her and hold her idle for several days to save crew's wages, subsistence, fuel oil, and other things.
Q. You made that decision just before you left, Captain?
A. I think so.
Q. How long were you out of town?
736 A. Three days.
Q. You left on July 3rd?
A. Yes.
Q. Do you remember what time of day you left?
A. I don't know.
Q. It was in the evening, was it?
A. I think so.
Q. After you finished at the office?
A. That's right; I think I left early in the afternoon.
Q. Captain, I want to ask you a few questions about these men shown on your Exhibit 19, who have worked in your shops after they were laid off these two vessels. I understand your shops are open shops, from the labor viewpoint?
A. That is correct.
Q. You hire anyone you please?
A. Yes, sir.

Q. Am I not correct in this, captain, that because they were open shops you tried to get these N. M. U. men work?

A. That's correct.

Q. And was that the only place where you felt, in your interpretation of the contract, you could work these men; is that right?

A. That is correct.

Q. You did not want to discriminate against the N. M. U.?

A. No, sir.

737 Q. Now, looking at this list, it seems that most of the men started to work about July 8th, isn't that correct—I won't say most, but a great percentage; that was the day they started, quite a percentage started on that day?

A. That list is taken off the pay rolls in our office.

Q. Well, will you consult the list and tell me if my conclusion is correct?

A. A majority of them did start work on the 8th.

Q. Now, that was evidently a day after you sent word around, or that your men sent word around, pursuant to your instructions, that any members of the crews of the "Fairland" and the "Bienville" could come to work in the shops?

A. I think so.

Q. Does that assumption compare to your best judgment?

A. Yes, sir.

Q. In other words, you probably sent word around on the 7th, is that right?

A. I imagine so.

Q. And the men went to work on the 8th?

A. Yes.

Q. Captain, do you remember receiving a telegram from Charles H. Logan, Regional Director of the 15th Region, of the National Labor Relations Board, on July 7th, the day before these men went back to work?

A. Yes; I remember very distinctly receiving that wire.

738 Q. I will read this wire and ask you if this is the wire which you received. This is addressed to you:

"Reference removal yesterday of N. M. U. men from your vessel at Mobile stop Board formulating plans for National Seamen Election petition of I. S. U. concurred in by N. M. U. and we, therefore, recommend and insist you immediately reinstate all men to former status and without discrimination pending final election action. stop Wire immediate answer."

Is that the wire you received?

A. I received that wire. I don't know if that is the exact wording of the wire, but I received a wire very similar to that.

Q. Substantially that?

A. Substantially the same.

Q. That was on July 7th?

A. Yes, sir.

Q. And didn't you call Mr. Logan on that same day, Captain Nicolson?

A. I have had several telephonic conversations with Mr. Logan from time to time.

Q. You have not answered my question. Do you remember or don't you?

A. I don't remember.

Q. Don't you remember that you called him that morning?

739 A. I probably did.

Q. And told him that you were not working N. M. U. men on your vessels because you had an I. S. U. contract, and under the terms of that contract you would not and could not work N. M. U. men?

A. I don't recall that conversation, but I probably answered that telegram.

Q. You would not swear that you did not say that, would you?

A. No, sir. I have talked to Mr. Logan some twenty or twenty-five times from time to time.

Q. Then, it was after this that you changed your mind as to why you had removed the men from the boats?

A. The fact that I gave those men employment in the warehouse was not as a result of Mr. Logan's telegram.

Q. Just a mere coincidence in time?

A. Yes, sir.

Q. And the fact that later on that day you decided that the men were removed, because the vessels were going into dry-dock and laying up for repairs, that was just a change of your own mind?

A. Apparently; yes.

Q. Captain, going back to the condition of the "Bienville" again. I understood you to state yesterday, and I believe you re-affirmed it today, that you had just bought this boat and those repairs were

740 necessary, and you planned quite a bit ahead of time to make those repairs?

A. That is correct.

Q. When did you plan to make those repairs? When were those plans formulated?

A. Well, we purchased the vessel in February, if I remember correctly, and we brought it down here and loaded cargo and did what repairs we could when we were loading, and before she sailed from Mobile in May, about May, we decided to do those repairs.

Q. You had decided then to do those repairs?

A. Yes.

Q. To make these extensive repairs?

A. Yes.

Q. And you ordered steel about that time?

A. Yes.

Q. And you ordered other equipment?

A. Yes.

Q. And you realized then that it would take three weeks or so to do the repairs?

A. Yes.

Q. There was no doubt in anyone's mind on that?

A. No, sir.

Q. And a lot of material was ordered to make repairs, in making plans for them?

A. That is correct, and our schedule arranged accordingly.

741 Q. Captain, don't you know, as a matter of fact, on July 22nd, at a hearing before the National Labor Relations Board in New York City, the respondent submitted a stipulation to the Trial Examiner, in which they gave the following schedule for the "Bienville":

Departure, July 2nd.
Panama City, Florida, July 5th.
Pensacola, Florida, July 8th.
Gulfport, July 9th.
Mobile, July 11 to 15th.

A. I don't know about that.

Q. You know that that case did take place up there?

A. What case is that?

Q. The American France Line, et al., and International Seamen's Union, to which the Waterman Steamship Corporation was a party and was represented by counsel?

A. I will have to look up the schedules, I don't know.

Q. You do not have any doubt but that this schedule was corerct, do you? I mean it states here: "The Waterman Steamship Corporation hereby submits the following facts in connection with the stipulation entered into" and so forth.

A. I know that we arranged several weeks beforehand to repair the "Bienville."

Q. Captain, you just told me, in May you planned all these extensive repairs and knew it would take several weeks?

742 A. That is correct.

Q. But on June 22nd, the Waterman Steamship Corporation evidently thought they would only take five days. Now, June 22nd was a bare two weeks before the ship was actually laid up?

A. I think I can explain that very well.

Q. I wish you would.

A. No doubt when this schedule was given the vessel was supposed to arrive in Tampa July 2nd.

Q. The vessel did arrive in Tampa July 2nd, didn't it?

A. And she was going to Panama City, Pensacola, Gulfport, and Mobile to discharge cargo, and we brought her right in here, instead of sending her around to those other ports.

Q. Captain, I don't think that explains the difference between the three weeks you had planned in May and the four days that you stipulated in June. The boat was right on schedule, wasn't it?

A. It was not, she arrived, she was not to have arrived until July 11th.

Q. And then she got here five days ahead of schedule?

A. That is correct.

Q. There were several stops cancelled out after Tampa?

A. That is correct.

Q. And the four days stipulated on June 22nd was changed to three weeks, but you had planned those three weeks, the
743 three weeks schedule, or a month, before that stipulation was entered into?

A. Apparently, I would say, yes. The "Azalea City" and the "Bienville" are sister ships, and it can be quite possible that we ordered this material for the "Azalea City" and we sent the "Azalea City" into Georgetown, and it was our intentions to do the repairs on the "Azalea City," but due to some mix-up in schedule, or due to the "Azalea City" being in Georgetown, and being able to send her around the Gulf more economically, it is possible we substituted the "Bienville" for the "Azalea City."

Q. Captain, do I understand you correctly in saying now that you are not sure whether you made these plans in May?

A. The two ships are sister ships.

Q. Are you sure or aren't you sure?

A. I am not sure we made plans on the "Azalea City" or the "Bienville" when we ordered this material.

Q. And you want to change all of your testimony along that line, is that correct?

A. I guess that is correct; yes.

Q. Is there any other testimony you want to change, Captain?

A. No, sir.

Q. Now, a word or two about passes. I believe it is in evidence here, both in the answer and in testimony, that as a condition
744 to granting the I. S. U. passes, you required two things, one of which is that they take out insurance to protect you from any loss, claim, liability, or damage?

A. That is correct.

Q. Did you have that insurance policy in your possession?

A. No, sir.

Q. Have you ever seen it?

A. I don't remember.

Q. You don't know, as a matter of fact, whether they have ever taken it out?

A. They told me they had insurance in Lloyds.

Q. You took their word for it?

A. Yes.

Q. But you didn't know?

A. No.

Q. You are the beneficiary under that policy?

A. No; we could not be the beneficiary.

Q. I mean it is for your protection?

A. No; it is for their own protection; it is to prevent us from being involved in a lawsuit in the event one of their delegates gets hurt aboard the ship.

Q. According to your answer, it is to protect you against any loss or claim?

A. Yes.

Q. It is to protect the Waterman Steamship Corporation?

A. Yes.

745 Q. But you never did bother to find out whether they took the insurance out or not?

A. That is correct.

Q. You have never bothered to find out whether they go on board the ships only to collect dues. That is correct, isn't it?

A. I have issued instructions to the Masters. I don't go up around the ships a great deal. I have certain assistants who are around the ships.

Q. And you are still permitting them to go on board ships in conformity with these rules, aren't you?

A. Yes.

Q. Do you remember when these letters were written, Captain?

A. I think the date is July 13th.

Q. Now, in Mr. Ross' answer to your letter he states:

"Our agents and delegates board ships only in line with their duties, to contact members of the International Seamen's Union of America, collect dues and attend to matters relative to the work and agreements existing."

You have never limited that in any way, have you?

A. No, sir.

Q. In other words, they are still permitted to contact members?

A. Yes, sir.

746 Q. And you realize now that the word "contact" falls within the perview of your limitations?

A. Yes.

Q. Do you remember whether those letters were mailed back and forth or were they delivered by messenger?

A. To Ross?

Q. Your letter to Ross and his letter to you?

A. I am pretty sure they were mailed.

Q. Now, Captain, I believe you have stated in your answer, and it has also been brought out by witnesses here, that a great number of men named in the complaint are actually working for the Waterman Steamship Corporation. I believe that you were to furnish us with a list?

A. Yes; some of them were.

Q. Do you know anything about their particular situation in coming back?

A. No, sir.

Q. You are not familiar with any one situation?

A. No, sir.

Q. You do know, Captain, that to come back they had to drop their N. M. U. membership and take out I. S. U. books?

A. I understand they did.

Q. Well, they would not be hired by you otherwise?

A. That is correct.

Q. And they were old employees, weren't they?

747 A. Yes, sir.

Q. And were they given preference or given their jobs back immediately?

A. I don't know.

Q. You don't know whether they were put on without going through the rotation list or not?

A. I am sure they went through the rotation list.

Q. How are you sure?

A. Because all our crews are employed that way.

Q. Are you sure of these men?

A. No, sir.

Q. These men are old men?

A. Yes.

Q. You don't know whether they were hired through the office or through the rotation list?

A. It is my knowledge that they were hired through the rotation list.

Q. That is your guess, but not your knowledge?

A. Yes.

Q. Captain, getting down to the general policy of the company on unions, you have no personal feeling against the N. M. U.; have you?

A. No, sir.

Q. The company has no definite policy against the N. M. U. as a labor organization?

748 A. No, sir.

Q. Then, the only reason these men, who did not sail again, the only reason is that they were not I. S. U. men when it came time to sail; is that correct?

A. Yes.

Q. I suppose, in line with your answer, you have never had occasion to call the N. M. U. hall for men?

A. No, sir.

Q. And I believe you stated yesterday that you tried to live up to your contract with the I. S. U., to the best of your ability?

A. Yes.

Q. Have they faithfully lived up to their end of the contract?

A. So far as they could.

Q. What do you mean by "so far as they could"?

A. There have been little differences from time to time, naturally, misinterpretation of the agreement, but our vessels have sailed on time, and they have always furnished competent crews.

Q. They have always been able to furnish full, competent crews?
A. Yes; but in many cases it is possible we got them crews when the ships are in port, I don't know.
Q. But when you sailed, you always sailed with full crews?
749 A. Yes.
Q. Captain, have you not on several occasions filed affidavits with the Department of Commerce, stating that no seamen were available to fill vacancies on your ships?
A. It is possible we have, around the Gulf.
Q. Do you deny that you have?
A. No, sir.
Q. You have done it?
A. Yes; but none of our vessels have ever gone foreign without the full complement of men on board.
Q. The requirement of that is the Safety on Seas Emergency and requires a minimum crew?
A. Yes.
Q. And if you sail without that minimum crew you are subject to a one thousand dollar fine, isn't that correct?
A. Unless, in the opinion of the Master, his vessel is seaworthy.
Q. And unless you file an affidavit that there were no seamen available in the port from which you sailed?
A. Yes, sir. We have got to file the affidavit twenty-four hours after arrival in port. I believe it is correct.
Q. Then, if this happened, that in other ports, Captain, the I. S. U. evidently always has not been able to give you full complement of crews——
A. I don't remember any vessel sailing out of Mobile with-
750 out a full crew.
Q. I am talking about your vessels, not just Mobile, and if you filed affidavits, evidently there have been occasions?
A. Yes, sir.
Q. When the I. S. U. has not been able to live up to their contract?
A. Yes.
Q. Now, did you call the N. M. U. hall to get seamen on those occasions?
A. I think the N. M. U. has only been in existence in Mobile for a few months.
Q. Captain, I am asking you specifically as to the N. M. U.?
A. I personally do not hire the crews myself.
Q. You do not hire the crews?
A. No, sir; I do not hire the crews.
Q. You are the executive vice president of your company?
A. That is correct.
Q. And you don't deny these affidavits were filed?
A. No, sir.
Q. And you don't deny why those affidavits were filed?
A. No, sir.

Q. Then, therefore, it is an irresistable conclusion that the crews could not be supplied?

A. Yes, sir.

Q. And yet the N. M. U. halls were not called?

751 A. Not to my knowledge.

Q. Now, if it was in another port, and your Masters did not call the N. M. U. halls, that is pursuant to your instructions that you had this I. S. U. contract and they were to make only I. S. U. replacements, is that right?

A. That is my understanding, and the N. M. U. had a strike last winter——

Q. Captain, I did not say——

A. (Interrupting.) I don't remember any of our vessels that sailed from any port without a full complement of crew since the N. M. U. called their strike off.

Q. Your recollection is none of your vessels sailed this spring or summer without a full crew, or that you filed an affidavit with the Department of Commerce?

A. I am not sure.

Q. That you have?

A. I recall that we have sailed without a full complement of crews during the time when the N. M. U. had declared a strike against the Atlantic & Gulf Coast shipping owners.

Q. You do know that you sailed, that you had sailings with entirely different replacements?

A. Well, the N. M. U. was on strike.

Q. Well, they were exceptions?

A. Yes.

Q. And you did not call up the N. M. U. for men, did you?

752 A. I don't know whether our Masters called on the N. M. U. for men or not.

Q. The I. S. U. did not fill up your crews?

A. Yes.

Q. And you filed an affidavit that no seamen were available in that port?

A. I did not file the affidavit myself when a vessel failed to have a crew.

Q. When I say "you," Captain, in every case I am referring to the Waterman Steamship Corporation.

A. Yes.

Q. Captain, there isn't that distinction in your vocabulary, is there?

A. No. I don't remember any vessel sailing from the port of Mobile without a full crew——

Trial Examiner SEAGLE. Will you please answer the question. That question is capable of being answered yes or no.

The WITNESS. No.

Q. And that is not discrimination, as you see it?

A. No, sir.

Q. Captain, do you distinguish between living up to a contract and attempting to use a contract as a shield to cover up discriminatory acts?

A. We have always lived up to our contracts.

753 Q. Captain, you were here when Captain Norville was testifying?

A. Yes, sir.

Q. You heard his testimony that on the boats he had sailed a great percentage of his crew, or a percentage, had been with him for one or two years?

A. Yes, sir.

Q. That was back in 1935 and 1936?

A. Yes, sir.

Q. That same situation is pretty much true on your whole line?

A. Yes.

Q. I mean, there is nothing peculiar about that boat?

A. No, sir; we have some men with us fifteen years, and they are still employed.

Q. This contract of the I. S. U. was signed in March 1936, wasn't it?

A. The second contract?

Q. No, sir; the contract which is in evidence, which is the topic of discussion here.

A. Yes.

Q. At that time, then, very conceivably you did have men on your boats who were not I. S. U. men?

A. My understanding is, I don't think we had any men in our ships at that time who were not I. S. U. men.

754 Q. Captain, I will refer back to the 1935 contract, just briefly, then. At the time you signed it, your whole crews were I. S. U. men?

A. At the time we signed our original contract in 1935 our whole crews were not I. S. U. men.

Q. And that contract specifically provided you did not have to discharge any man because he did not join the I. S. U.?

A. That is correct.

Q. Consequently, if you had employees who worked for you continuously all the way through, they could still be working for you and still not be I. S. U. men; is that right?

A. That is correct, according to the contract.

Q. They could still be working and not be members of the I. S. U.?

A. Provided they did not leave our employ.

Q. That is what I say, continued to work?

A. That is correct.

Q. So you don't really know how many of your mem are not I. S. U. men today, do you?

A. The way we ship, it is my belief they were one hundred percent I. S. U.

Q. But, Captain, isn't it possible that some of these men were not I. S. U. men when you signed the contract and have worked for you continuously since, and have not joined the I. S. U.?

A. I don't think it is possible.

755 Q. Why isn't it possible?

A. That you have got a crew on a vessel belonging to one organization——

Q. Under the terms of the contract it is possible?

A. Under the terms of the contract.

Q. That is your judgment of union organization?

A. If you have got three or four good union men in any one ship, at the end of the round trip, you will have the whole crew signed up.

Q. You have had experience like that?

A. I have had experience like that; yes, sir.

Q. On the "Bienville" and the "Fairland"?

A. Yes.

Q. Do you keep track, though, from time to time, as to when your men went over to the I. S. U., that were nonunion, at the time you signed the contract?

A. No.

Q. Then, you don't know, do you?

A. Except by shipping through the rotation system.

Q. But, Captain, if they continue in your employ, they don't go through the rotation system?

A. That is correct.

Q. In other words, it is very possible there are a great number of men working on your vessels today who were not I. S. U. men at the time you signed the contract, and who continued

756 working steadily since then, and are not I. S. U. men today?

A. I don't think it is possible, because they would not be allowed to make more than one trip by the members of the I. S. U. who were in control of the ship.

Q. But the signing of the contract did not make them I. S. U. men?

A. The contract didn't do it, but if a man who is a ship's delegate is doing a pretty poor job if he cannot swing the full crew his way.

Q. Then, there are provisions in your contract which are not written down here?

A. No, sir; there is not.

Q. How large an office force does the Waterman Steamship Corporation have?

A. About one hundred and fifty people.

Q. Those people are not under written contract, are they?

A. No, sir.

Q. But from day to day you regard them as possessing their jobs, don't you, and they regard themselves as having a job?

A. Correct.

Q. And they come down in the morning and you look for them to come down?

A. Yes.

Q. In other words, that fixes the economic system whereby an employer has given the employee a job and both consider it
737 a job until one of them is fired?

A. That is correct.

Q. Without anything in writing?

A. That is right.

Q. There is nothing strange about that to you, is there?

A. No, sir.

Q. Isn't all of your hiring and firing done, respectively, by the Port Captain, Port Steward, and the Port Engineer for the vessels?

A. Not necessarily, the hiring of the officers is done by the Captain.

Q. I mean the unlicensed personnel.

A. The unlicensed personnel is generally done by the Chief Officer, the Steward, and First Assistant Engineer.

Q. Then, when you testified here yesterday that no one was fired because of the N. M. U. you testified to your knowledge they were not fired?

A. That is correct.

Q. If they were fired by your officers, because of N. M. U., you don't know it?

A. That is correct.

Q. And you won't swear that they were not fired because of the N. M. U.?

A. There was men on the "Bienville" and "Fairland" laid up due to the fact that the vessel was laid up.

738 Q. Would you swear absolutely that there was no man fired because he was an N. M. U. man?

A. I don't think I could swear to that, but I can swear that the crew was laid off on account of our vessels being laid up.

Q. Captain, you gave some testimony regarding C. J. O'Connor yesterday. You stated that all of your engineers are now in M. E. B. A., is that right?

A. Yes.

Q. And in fact, all of your officers are in some union or another?

A. So far as I know, yes.

Q. And you stated that by showing one reason why you would not be discriminating against this man because of his membership in the M. E. B. A.?

A. Yes.

Q. Have you ever had any other occasions, Captain, when one of your engineers has acted as spokesman for the engineers on a boat and has spoken about what he considered a violation of the contract?

A. I very seldom come in contact with them.

Q. You don't know of any other case?

A. No, sir.

Q. That is the only case you know of?

A. Yes, sir.

739 Mr. Hoskins. I think that that is all.

Mr. Lustig. Mr. Trial Examiner, in view of the fact that the union is vitally interested in the nature of this agreement, may I ask the Captain a few words concerning this agreement?

Trial Examiner Seagle. Well, as I frequently stated, I can permit examination only by one counsel.

Mr. Lustig. Would the Trial Examiner permit me to make the Captain my witness now for the purposes of cross-examination?

Trial Examiner Seagle. I am afraid I cannot.

Cross-examination by Mr. Howard:

Q. Captain, at the time you made your original contract with the International Seamen's Union, as far as you know, was there any National Maritime Union in the port of Mobile?

A. No, sir.

Q. Did you give any notice to the masters of your ships, and to the men who usually hire men in the port of Mobile, that you had made such a contract?

A. Copies of the contract were placed on board vessels; copies of the agreements were given to the Masters, Mates, and heads of the departments on board the vessels.

Q. Now, in all of your experience as an executive of a steam-
760 ship company, isn't it a fact that ships have used union labor very largely?

A. Yes.

Q. Do you remember any instance when your company was without some sort of a contract with a labor union for the running of its ships?

A. Yes, sir; we went for the period from 1921 to 1934 without any labor contracts with any organizations.

Q. Now, after you made the contract with the International Seamen's Union, you posted everybody who had anything to do with it, that the hiring of marine firemen, oilers or water tenders, or the hiring of seamen, or any of the unlicensed personnel; in other words, you gave them notice of this contract?

A. Yes, sir.

Q. Now, since then have any efforts been made, as far as you know, in negotiating with your company, to get you under agreement with the National Maritime Union?

A. No, sir.

Q. Have you, in handling this matter of employment of labor, have you ever at any time discriminated against anybody because he belonged to the National Maritime Union, except insofar as your contract is concerned?

A. No, sir.

Q. Now, in attempting, since the formation of the National
761 Maritime Union, in adhering to your contract with the International Seamen's Union, have you acted under advice of counsel?

A. Yes, sir.

Q. When the question came up as to whether or not, after the active formation, the active participation at the port of Mobile of the National Maritime Union, in the affairs of Seamen, has the International Seamen's Union demanded that you continue to give them preference?

A. Yes, sir.

Q. Have you been advised by counsel that you have no choice in this matter, but that you have to live up to the terms of your agreement?

A. Yes, sir.

Q. Now, with respect to these crews of the "Fairland" and the "Bienville," isn't it a fact, captain, that after the alleged firing or withdrawal of these men from your ships, that a good many of these men have been reemployed?

A. Yes.

Mr. LUSTIG. Haven't we gone over all of that on direct? Is this cross or is this direct?

Trial Examiner SEAGLE. This is cross.

Q. So that those men, whose names are mentioned in the complaint, have come down to your ship, to be rehired, as far as you know, and has anybody connected with your company, or anyone in your ships held that up against them or differentiated between them and any other members of the crew, because they had been connected with the National Maritime Union?

762

A. No, sir.

Q. As far as you know, has it been entirely a question with the Waterman Steamship Corporation and the Masters of the ships as to whether a man was a capable seaman?

A. Yes.

Q. Now, with respect to these two ships, the "Fairland" and the "Bienville," was there left to the Masters any discretion or choice as to whether to keep these men, or were the orders that resulted in the lay-up of the ship and the shutting off of the steam, were or were not those orders in each case given from the home office of the Waterman Steamship Corporation?

A. The Masters of the vessels were given definite instructions to lay these crews off. They did not use their discretion.

Q. May I ask you this, if, under the rules and practice of the Waterman Steamship Corporation, since entering into this contract, have you ever allowed any of your masters, Captain Norville, or the captain of the "Bienville," or any other officer, or authority, to reemploy a man, although that man had abandoned his connection with the International Seamen's Union and had joined some other union? In other words, if your company, after making this contract, require these Masters to live up to it, or did you give them some discretionary right to reemploy the men, even though they did not belong to the International Seamen's Union?

763

A. Our Masters have been instructed to secure all their men through the International Seamen's Union.

Redirect examination by Mr. McConvey:

Q. Captain, Mr. Hoskins asked you, on cross-examination, as to how you knew that the men that were furnished for membership of your crews were members of the I. S. U.? And I believe you stated that you assumed they did not furnish members of any other union; is that correct?

A. That is correct.

Q. And during all of your long experience over thirty years, thirty-odd years in the shipping and Maritime business, have you ever heard of any custom, or have you ever heard of any case, where one union under contract with a steamship company furnished, as members of a crew, under the contract, members of another union?

A. No, sir.

Q. As far as you know when those two ships left Mobile, I believe you testified they were one hundred percent I. S. U.?

A. When the two vessels left Mobile they had full crews that were furnished by the International Seamen's Union.

Q. Mr. Hoskins also asked you as to this clause in your contract by which you must give preference to I. S. U. mem-
764 bers. If the I. S. U. is unable to furnish you with the number of seamen of the particular classification that you call for, were you then permitted, under your contract, to go elsewhere?

A. Yes.

Q. Now, Captain, relative to those passes, you heard Mr. Hoskins on the first day of our hearing, when he introduced in evidence the ruling made in this case, in which your company and a large number of steamship companies were parties, the decision handed down on September 11, 1937, in which it was held that, notwithstanding any arrangements heretofore suggested, that the steamship companies, in order to avoid discrimination in connection with the participation in activities leading up to and surrounding the conduct of elections, must refrain from granting of an unequal number of passes to representatives, that is the language there used, "To representatives who purport to be soliciting the adherence of the unlicensed personnel with any unions affiliated with the American Federation of Labor than to those soliciting the adherence of unlicensed personnel with the National Maritime Union." You heard Mr. Hoskins when he read that statement?

A. Yes, sir.

Q. Now, as a matter of fact, long prior to those decisions, you had notified your Masters and Mr. Ross, as I understand it, that you would not issue passes to the I. S. U. or either the
765 N. M. U. for the purpose of soliciting membership?

A. That is correct.

Q. This was in September, and I believe your letter was in July. Now, Mr. Hoskins also cross-examined you at great length relative

o the crew on a ship belonging to the Everett Steamship Company. notice in this contract between you and the I. S. U., there is a list f some forty-odd companies that are parties to it; about forty-five, believe. Was the Everett Steamship Company one of the signers f this contract?

A. No, sir.

Q. Have you at any time had any arrangement with the I. S. U. y which you had to employ only I. S. U. men on vessels, except essels owned by your company?

A. No, sir.

Q. In other words, in operating vessels for the Everett Steamship Company you had the right to employ any N. M. U. men you anted?

A. That is correct.

Q. In fact, you did ship a whole N. M. U. crew?

A. We originally shipped with the Sailors Union of the Pacific Coast, and then we had the N. M. U. men. The original crew was Sailors Union of the Pacific Coast, who were on board at the time e purchased.

Q. And the only vessels you could not ship with N. M. U. 66 men were your own vessels?

A. Yes.

Q. That is covered by the contract?

A. Yes, sir.

Q. I ask you if you checked this over and found that the Everett Steamship Company was not one of the forty-odd steamship companies which entered into this agreement, didn't I?

A. Yes.

Q. I believe you stated that this contract was amended several imes?

A. Yes, sir.

Q. And each one of these amendments the International Seamen's Union hiked up the pay of the seamen, did they not?

A. That is correct.

Q. And the schedule by which able seamen get $72.50 per month, nd ordinary seamen $55 per month is in force now?

A. Yes, sir.

Q. So far as your observations have gone, the International Seamen's Union has not failed to look after the interests of its men?

A. Yes, sir.

Q. Now, Captain, Mr. Hoskins asked you about the practice of ermitting members of the crew of a steamship, such as the "Bienville," when it came into dry-dock, doing certain work on 67 the steamer, and you went into some detail and explained the steam was cut off and the sanitary conditions could not run, nd so on, and I would like to ask you if, as a matter of fact, such ork as converting a deep tank into a cargo hold can be done by hese seamen?

A. No; it cannot.
Q. That is a kind of work requiring——
A. (Interrupting.) Boilermakers, welders, and——
Q. (Interrupting.) Acetylene gas workers?
A. Yes, sir.
Q. Skilled workers?
A. Yes, sir. riveters, welders, and boilermakers.
Q. And if the men of the crew were put on, were kept by, could they have handled that work?
A. No; they would not be able to do that work. It is shipfitting work under a special process.
Q. The kind of work that is done out of your shop?
A. Yes, sir.
Q. And the same thing applies to altering the crew's quarters and the peak tank?
A. The crew's quarters is carpenter work and electrical and plumbing work, and that work requires skilled men.
Q. Outside of this contract that was signed up, and as I have said, signed up by forty-five odd companies—first I will ask you,
768 they are practically all the leading steamship companies on the Atlantic and Coast, are they not?
A. Yes, sir.
Q. As far as you know, this is the form of contract used by every steamship company on the Atlantic and Gulf Coast?
A. I believe it is.
Q. And this term that Mr. Hoskins has asked you about at some length, "prompt reshipment," that is in each one of the copies of this contract, is it not?
A. I believe it would be.
Q. And I believe you were one of the witnesses who testified that it was the practice that each member of the crew be given a copy of the contract at the time they shipped?
A. I don't know about that.
Q. You heard several of the witnesses, you heard a number of these N. M. U. witnesses state they were furnished a copy of this contract?
A. I don't know whether the union furnishes its members with a copy of the contract or not.
Q. And in that contract the term is used, "prompt reshipment"?
A. Yes, sir.
Q. Now, there has been a great deal said about a home port of a vessel?
A. Yes.
Q. I believe that you said that is provided by statute?
769 A. Yes, sir.
Q. I will ask you if Section 18 under the Title 46, under the heading "Shipping" of the United States Code Annotated, it is provided what the home port of a vessel is in the United States, and also Section 46 of the same Title 46 provides that the name of the home port must be marked on the bow and stern of the vessel, and

so forth, and it is a well-defined term in maritime and shipping circles?

A. Yes, sir.

Q. And the home port of practically all of your vessels is Mobile, isn't it?

A. That is correct.

Mr. McCorvey. We want to offer in evidence a statement which the Trial Examiner requested Captain Nicolson to furnish, which shows the names of those members of the crew of the "Bienville" and the "Fairland," and their present occupation, where given, aside from those who are listed on the other schedule filed this morning.

Trial Examiner Seagle. Are you now referring to Respondent's Exhibit 19?

Mr. McCorvey. I will add this to my statement: That the names of the steamships shown in the last column are the names of the vessels of the Waterman Steamship Corporation on which these men are working, that is, where one of them is working for the
770 Waterman Steamship Corporation, the name of the steamship is shown. I believe that that covers it, Mr. Examiner.

Trial Examiner Seagle. I believe so.

Mr. Hoskins. No objection.

Trial Examiner Seagle. The document will be admitted in evidence as respondent's Exhibit 21.

(Thereupon, the document above referred to was received in evidence and marked "Respondent's Exhibit 21.")

Recross-examination by Mr. Hoskins:

Q. Captain Nicolson, in answering Mr. McCorvey's questions on redirect, when you testified that these men could not do the work on the tanks on the boat, you did not mean to qualify in any way your testimony that you gave me on cross-examination; I mean, you want the testimony to stand on cross-examination the way it is in the record?

A. Yes, sir.

Q. When you testified as to this contract of the forty-five steamship lines that are signed to it, you don't know how many of those steamship lines have repudiated the contract, do you?

A. No, sir; I do not.

Q. Captain, what was the first knowledge you had that the crews of the "Bienville" had changed from I. S. U. to the N. M. U.?

A. I really don't remember.

771 Q. You do remember, don't you, that you received word, before you left on your July 4th holiday?

A. No, sir; I did not. I did not receive word until after I returned.

Q. Until after you returned?

A. Yes, sir.

Q. And the same thing applies to the "Fairland"?

A. Yes.

Q. And in answer to a question, you stated that under certain circumstances you are permitted to go elsewhere for your seamen; in

other words, when the I. S. U. cannot furnish you the men, you can go elsewhere?

A. I should think that we could.

Q. And if the situation came up and they could not furnish you, and you did not go elsewhere, would you consider that as discrimination against the N. M. U., if the N. M. U. had seamen there?

A. I should say it would; yes, sir.

Q. How long have you been clearing all of your men through the I. S. U.? How far back does that date?

A. Possibly February or March of 1935.

Q. That is the only source you have gone to to get your men?

A. Since March 1935. Prior to that time we used to clear them through the Sea Service Bureau of the Government.

772 Q. Do you know, Captain, why when this contract was made it was written under a preferential clause rather than a closed-shop clause?

A. No, sir; I do not.

Q. You don't know that?

A. No, sir.

Q. But you have carried out the same as though it were a closed shop?

A. Yes, sir.

Mr. HOSKINS. I think that is all.

Examination by TRIAL EXAMINER:

Q. Captain, when did the N. M. U. first make its appearance here on the Gulf Coast, do you know?

A. I don't remember; no, sir.

Q. You have no recollection of that?

A. No, sir. They were under three or four different names. I think around October or November of last year they were organized under a certain membership called the International Seamen's Union Strike Committee, or some such name as that, and later they changed the name to the N. M. U.

Q. Does the N. M. U. maintain a hall here now?

A. I understand they maintain a hall here.

Q. How long has that been true?

A. I couldn't answer; since last October, I should say.

773 Q. Would you say it is a fair summary of the situation with respect to the "Bienville," that the repairs made on it were of a structural character?

A. Yes, sir.

Q. And as I understand you, you converted a hold?

A. We converted an oil tank into a cargo hold, and converted a storeroom into a fuel-oil tank, and we rearranged the crew's quarters and took the former crew's quarters and made it into cargo space.

Q. Now, the "Bienville" was seaworthy at the time when the structural repairs were made?

A. Yes, sir; most of the work we did on the "Bienville" was betterments, and it did not in any way affect or make her any more seaworthy. It was betterments on the vessel.

Q. In other words, the "Bienville" could have sailed again, as far as seaworthiness was concerned?

A. She could; yes, sir.

Q. And you decided to make repairs at that time?

A. Yes, sir.

Q. But it would have been possible for the "Bienville" to make another trip; would it not?

A. Yes.

Q. And for the repairs to have been made at a subsequent time?

A. Yes.

Q. Isn't that true?

A. None of the repairs that were done had to be done right
774 at that moment.

Q. Now, with respect to the "Fairland"; what was the nature of the repairs on that vessel?

A. I don't think we did any repairs to speak of on the "Fairland," other than to clean and paint her at drydock.

Q. So that the "Fairland" was seaworthy; was it not?

A. Yes, sir; the "Fairland," after going on drydock, was seaworthy, but she was held up to make her schedule; she was a little ahead of one schedule and a little behind another.

Q. So the "Fairland," too, as far as seaworthiness, could have sailed again?

A. Yes.

Q. What is your usual custom in the case of a vessel that is laid up in drydock for, say, not more than a week; would you retain all or most of the crew, normally, in such a case?

A. Well, a week's time would all depend on the condition of the ship, and——

Q. I am not speaking now of the condition, but only of the time factor. Assume a case of a vessel that has to be laid up for not more than a week; what is your usual practice; would you retain the crew?

A. If we kept the vessel in drydock for five days, say, we would keep the full crew by her, but if we kept her laid up seven days, we would think very carefully whether we could use the crew then.

775 Q. But there have been many instances where a vessel has been in for seven days where you kept the crew?

A. We have kept a good portion of the crew.

Q. Haven't there been instances where you kept the full crew where a vessel was in not more than seven days?

A. Yes.

Redirect examination by Mr. McCovey:

Q. Captain, as I understand your answer to the last question, Mr. Hoskins asked you, you stated you considered this a closed-shop contract, and in your early testimony I understood you to testify that the I. S. U., if the I. S. U. could not furnish you men you needed, then you considered the contract as giving you the right to use N. M. U. men. Which is right?

A. Well, if the I. S. U. could not furnish us our men, we would be allowed to go elsewhere to get them.

Q. Well, you wouldn't consider that a closed shop, would you?

A. Not in that case; no.

Q. In other words, a closed shop would mean that you would have to use only I. S. U. men?

A. Yes, sir.

Q. And that is not in the contract?

A. No, sir.

Q. You have a preferential contract?

A. Yes, sir.

776 Recross-examination by Mr. Howard:

Q. Isn't it a fact, Captain, that when the contract was entered into the open shop feature was carefully preserved so that a man who did not want to joint the union would be protected?

A. Yes, sir.

Mr. Hoskins. Mr. Examiner, I think that question was answered by the witness, that he don't know.

Examination by Trial Examiner:

Q. Were any bottom repairs done on the "Fairland"?

A. I don't know if any bottom repairs were done. There may be some minor bottom repairs. Her bottom was cleaned and painted.

Q. There were no repairs made on the bottom?

A. I don't know if any repairs were made on the bottom, if there were, they were of a minor nature.

Q. Well, if you know they were of a minor nature, you know what the situation was with respect to them, then?

A. I don't know what repairs were done on the "Fairland."

Q. Are you prepared to say that repairs were made on the bottom?

A. No, sir; but my port engineer, who will follow me—we will have a witness who actually handled the "Fairland" and he will testify to it.

Q. I am asking you this hypothetical question: assuming
777 that no repairs were necessary on the bottom, how long would a ship have to be in dry-dock?

A. Twenty-four hours.

Q. Not more?

A. Twenty-four or thirty-six hours.

Trial Examiner Seagle. That is all. The witness is excused.

778 WALTER INGRAM, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. JOHNSTONE:

Q. Mr. Ingram, are you employed by the Waterman Steamship Corporation?

A. Yes, sir.

Q. In what capacity?

A. Assistant port engineer.

Q. Were you employed in that capacity by the Waterman Steamship Corporation in July, 1937?

A. I was.

Q. In July, 1937, did you have a conversation with Mr. C. J. O'Connor in Gulfport?

A. In July, 1937 I think I did.

Q. Was that at the time the "Azalea City" had come into port in Gulfport?

A. Yes, sir.

Q. Will you please state to the Examiner the substance of the conversation which you had with Mr. O'Connor at that time?

A. I don't remember all of the conversation, the exact conversation.

Trial Examiner SEAGLE. Give us the substance of it. Do you remember the substance?

779 Q. Just tell about that conversation, as much as you remember of it; the substance of the conversation that you had at that time?

A. When I went on board the "Azalea City" in Gulfport I had talked to Mr. O'Connor and he was all hot and worked up over the night work that he was doing, that he called overtime.

Mr. HOSKINS. Mr. Examiner, I want to move to strike the words "hot" and "worked up," as conclusions of the witness.

Trial Examiner SEAGLE. The motion is denied.

Q. Just state the conversation.

A. And he wanted to know if we were going to pay him for the overtime he had coming. I told him I could not see as he had any overtime coming, and we talked for some time, and during that talk, then I told him when he got to Mobile to get off and take his vacation, and we would straighten it out after that.

Q. In that conversation, Mr. Ingram, was it your understanding that it was Mr. O'Connor's desire to leave the ship in Mobile at the time it got here?

A. Yes.

Q. At the time you talked with Mr. O'Connor, did you at that time think that he was entitled to a vacation?

A. Yes, I did think so.

Q. Did you make arrangements for him to leave the ship when he arrived in Mobile?

A. I did.

779½ Q. Was that satisfactory to Mr. O'Connor, so far as you knew, from your conversation with him?

A. Yes, sir.

Q. Did you see Mr O'Connor at any time after the "Azalea City" arrived in Mobile?

A. Yes, sir.

Q. What was the conversation with him at that time?

A. Along the same lines we had in Gulfport.

Q. Did he ask you anything at that time about his vacation, or pay?

A. No; he never asked me anything at that time about it.

Mr. Hoskins. Mr. Witness, will you speak a little louder?

The Witness. No, sir; he didn't ask me anything at that time concerning his vacation.

Q. Do you know whether or not Mr. O'Connor went to the office of the Waterman Steamship Corporation to talk to anyone in that office about his vacation and pay?

A. I was told that he went up there.

Q. Do you know to whom he talked when he was in the office?

A. I think he talked to Mr. Lemon.

Q. You were not present at the time of the conversation?

A. No, sir; I was not.

Q. Since this occasion, which you have spoken about, has Mr. O'Connor ever applied to you for re-employment with the

780 Waterman Steamship Corporation?

A. He never has applied to me; no.

Q. Mr. O'Connor testified that it had been the custom, previous to this time, when you wished to have him sign on a ship, that you would 'phone him to let him know that you wanted him to sign on, and that after this time you did not 'phone him and let him know that you wanted him to sign on a ship. Will you please explain the reason why you never 'phoned Mr. O'Connor?

A. Well, it is customary, when a man gets off for vacation, when he is ready to go back to work, he applies to me, or notifies me, or my boss, Mr. Lemon, that he is ready to go back to work and then we put him on the list and as jobs come up, we call him for that ship.

Q. I believe you said that Mr. O'Connor never applied to you for re-employment?

A. No, sir; he has never reported to me that he is ready to go back to work.

Q. To your knowledge, did he ever apply to any official of the Waterman Steamship Corporation for re-employment?

A. No, sir; not to my knowledge.

Q. Mr. Ingram, at the time the "Fairland" was put on dry-dock, here in July 1937, do you know what repairs were made to the "Fairland" at that time?

A. Yes; I know pretty much what was done. I have a list

781 of some of them.

Q. Will you state what repairs were made at that time?

A. When the ship was dry-docked she was cleaned and painted. We drew the tail shaft for inspection, re-woodeed the stern bearing, and replaced the tail shaft and installed the propeller. I have a list here of some more work that was done after she came off of dry-dock.

Q. That was during the time she was in Mobile, at that same time?

A. At the same time.

Q. After she came off dry-dock?

A. After she came off dry-dock, yes. We installed rubber gaskets around the port holes in the officers' mess room, steward's room, second and third mates' room, and radio room; second assistant and third assistant's room, mates' and captain's room.

We installed seven hooks and four port lights. Removed and examined and replaced the steering chain. Overhauled and freed the steering chain sheaves on poop deck and on the well deck, port side. We renewed the bushings, reamed out and renewed eleven engine bed bolts on the port and starboard side, forward end. Re-bushed the steering wheel shaft in the control column in the pilot house. Turned down the lathe motor commutator. Renewed crank disc on spare winch crankshaft. Re-metalled I. P. cross head slipper, and installed the same.

782 We repaired the ladder rail to the forecastle.

Renewed 12 port-hole screens.

Renewed two sheave housing of steering gear chain on port side of after deck. Built up and remachined two sheave pins.

We built a locker in the linen locker for beer and coca cola. Repaired the springs on bunks in the crew's quarters. We renewed one screen door in the chief mate's room and built one small box cover.

That is the biggest part of the work we did after she came off drydock.

Q. Was it customary for members of the crew to do any of this work which you have listed?

A. No; they could not do this work here; the crew could not do that.

Q. Was there any work to be done on the "Fairland" at this time, any work that was necessary to be done on the "Fairland" at this time, that could have been done by the crew?

A. No, sir.

Q. Mr. Ingram, will you point out what part of that work had to be done while the ship was in drydock, that is, part of it was below the water line and could not be done unless the ship was on drydock?

A. Well, cleaning and painting, for one thing, and the removing of the tail shaft.

783 Q. You mean cleaning and painting of the bottom?

A. Of the ship's bottom, yes, sir, below the water line, work normally up to the light load line. The drawing of the tail shaft and rewooding of the stern bushing or stern tube or bearing, it is

all the same, and installing of the propeller had to be done while she was on drydock.

Q. When the "Fairland" was brought into Mobile, and it has been testified by Captain Norville that you gave him orders that the steam was to be killed—will you explain the reason why the steam was to be killed at that time?

A. For economic reasons.

Q. Will you explain that just a little bit more, Mr. Ingram?

A. Well, a ship coming in which had to be here for several days—we had no need for steam on the ship, so I decided to have the steam killed.

Q. As I understand your testimony, Mr. Ingram, then there was absolutely no necessity for keeping any crew on board the ship during the time this work was being done on it; is that right?

A. That is correct.

Q. Mr. Ingram, it has been testified that employment was given in the shops of the Waterman Steamship Corporation to some of the men who had previously been members of the crew of the "Bienville" and the "Fairland," is that correct?

A. That is correct.

784 Q. How did you give notice that employment would be given to these men at the shops?

A. Well, it is customary for us to give those men that employment, if they want it, and I told some of them that if they wanted to come around there was work to be done.

Q. Some of those members of the crew?

A. Yes.

Q. Is it customary, when you do this work with the men, to tell every member of the crew that he could obtain work at the shops, or do you customarily just give word to some of the members of the crew, or let it be known generally that work was available?

A. I let it be known generally.

Q. And that was done in this case?

A. In this case; yes, sir.

Q. Mr. Ingram, there has been introduced in evidence a list of the men who worked in the shops who had previously been members of the crew of the "Bienville" and the "Fairland," and this list also indicates the dates when the employment of these men in the shops was terminated. Was the employment of any of these men in the shops terminated because of their N. M. U. affiliation?

A. Not to my knowledge; no.

Q. The hiring of the men in the shops was generally under your supervision, was it not?

785 A. Not generally, no sir; because the foremen hire their own men.

Q. But you have general knowledge of the conditions with regard to that employment?

A. General knowledge. I don't hire them direct.

Q. You don't hire them yourself?
A. No, sir.
Q. Will you please explain what system was followed in deter-ining what men should be allowed to work in these shops, when ork had to be done?
A. Well, as we do on any job, we start off with a big push, and t everything going that we can, and get everything done as quick possible, and as the job is completed, why, we lay the men off cordingly.
Q. What rule do you follow in determining which employees shall laid off?
A. We try to work the seniority system, the best we can.
Q. Do you mean by that, Mr. Ingram, that the men who have orked at the shops for the longest periods of time are the ones who e given preference in continuing to work?
A. That is right.
Q. The seamen who had previously been on the "Bienville" and e "Fairland," had not, at this time, had seniority in the shops over ne of the other men who were retained after they were laid off, had they?
6 A. They did not have seniority.
Q. Mr. Ingram, Mr. Stewart testified here that you told him one time that he could not get work on the ships of the Water-an Steamship Corporation as long as he had an N. M. U. button. id you have such a conversation with Mr. Stewart?
A. I don't remember talking to him personally, but I did tell veral of them that in practically those same words, due to the con-act that we had with the I. S. U.
Q. What was your reason for making that statement to these men?
A. I was asked to.
Q. You were asked by the men?
A. I was asked by some of the men if they could sail in the ships they belonged to the N. M. U.
Q. What was the reason for your conclusion that they could not il in those ships as long as they were members of the N. M. U.?
A. Well, according to our contract, we would have to take all the en from the I. S. U. Hall.
Q. And your statement was made because of your contract with e International Seamen's Union?
A. That's right.
Q. Mr. Ingram, were you employed with the Waterman Steam-ip Corporation prior to March 1936?
A. Yes, sir.
7 Q. About how long have you been employed with the Water-man Steamship Corporation?
A. Since 1922.
Q. During the time prior to March 1936, let us say, for several onths prior to March 1936, did you know whether or not the mem-

bers of the crews of the Waterman Steamship Corporation were members of the International Seamen's Union?

A. Except through the rotation system they had in the shipping of the men through the I. S. U.

Q. For how long prior to 1936, March 1936, to the best of your recollection, had the crews of the Waterman Steamship Corporation been hired through the I. S. U. Halls?

A. Since we first had a contract with the I. S. U.

Q. Do you have any part in the hiring of these men through the I. S. U. Hall?

A. I call the Hall for most of the men.

Q. Mr. Ingram, in your experience, have you ever known of the International Seamen's Union furnishing men to go on board these ships, as members of the crew, who were not members of the International Seamen's Union?

A. I have never known it.

Q. Mr. Ingram, did you know that it was contemplated that the S. S. "Fairland" would be put on the drydock in Mobile for repairs at the end of the voyage, of which you have spoken, before the members of the crew changed their membership from
788 the International Seamen's Union to the National Maritime Union?

A. To the best of my recollection, I told the Captain and the Chief Engineer, before they sailed, that when she came back she would go to drydock.

Q. About how long before she was actually put on drydock was it that you told the Captain?

A. About three weeks.

Q. About three weeks?

A. At the beginning of the voyage.

Q. In regard to the S. S. "Bienville," did you know that the S. S. "Bienville" was to be laid up for repairs before the members of the crew of the "Bienville" changed their membership from the International Seamen's Union to the National Maritime Union?

A. Yes.

Q. It had been definitely planned to tie it up for repairs before there was any change from the International Seamen's Union to the National Maritime Union?

A. The best of my recollection is that while the ship was on its way home, it was decided—and by "home" I mean a port in the United States, it was decided that we would lay her up and make the repairs that had been contemplated some time previous.

Q. In other words, you mean that you knew that she was to
789 be tied up for repairs before the ship arrived in Tampa, Florida?

A. Oh, yes; before she arrived at Tampa, Florida.

Q. Mr. Ingram, did the fact that the members of the crew of S. S. "Fairland" joined the N. M. U., have anything whatever to do with

he decision to lay up the "Fairland" or put it in drydock here for epairs?

A. No.

Q. Did the fact that the members of the crew of the S. S. "Bienville" changed their membership from the International Seamen's Union to the National Maritime Union have anything whatever to do with the fact that the "Bienville" was laid up for repairs when it came into Mobile?

A. It had nothing to do with it.

Q. Mr. Ingram, at the time that the "Fairland" came in port here in Mobile, do you know whether or not there were any members of the crew on board who were still members of the I. S. U. and who had not changed their membership over to the N. M. U.?

A. I had no personaly knowledge, I did not know personally, but I have been told that there were two or three of them who had changed their books.

Q. Were those men who did not change their books laid off in exactly the same manner as the men who did change their books?

A. Exactly in the same manner, there was no difference made.

Mr. JOHNSTONE. That is all.

790 Cross-examination by Mr. HOSKINS:

Q. Mr. Ingram, you say you have been with the Waterman Steamship Corporation since 1922?

A. Yes, sir.

Q. And how long have you been the assistant port engineer?

A. About approximately four years.

Q. Who is the port engineer?

A. Mr. Lemon.

Q. What are your duties as assistant port engineer?

A. Well, that covers a multitude of sins.

Q. Well, what are your sins, then?

Trial Examiner SEAGLE. Confess the sins.

A. Well, looking after repairs on the ships, the running of repairs on the ships, and the general upkeep of them, and looking out for the crews the best I can.

Q. Now, the port engineer is in direct charge of the engine division of each boat, isn't he?

A. Yes, sir.

Q. And, as assistant port engineer, you are in charge, too?

A. Yes; under his direction.

Q. And you have the authority to hire and fire the engineers and the engine crew on the boats?

A. No, sir; I only have authority through him.

Q. Through the port engineer?

A. Through the port engineer; yes. He must Okeh any of my decisions.

791 Q. I mean, the officers, the port engineer and the assistant port engineer have that right?

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A. Yes, any of the crew.
Q. Just the unlicensed officers?
A. The unlicensed officers.
Q. And who hires and fires the crew in the engine room?
A. That is up to the first assistant engineer.
Q. And do you have to approve his selections in any way?
A. No.
Q. Can he fire a man without your consent?
A. Yes.
Q. But you can fire a man without his consent, can't you?
A. Yes, I could; but it is never done.
Q. Didn't you testify that you gave orders to lay off the crews in this case?
A. Well, in a case like that I can tell him to do it, yes sir.
Q. Well, he follows your instructions, then?
A. Oh, yes.
Q. And from whom did you take your orders in that particular case?
A. The particular case, what?
Q. Speaking of the "Bienville" and the "Fairland" specifically, or singly, or you can answer for both of them, I don't care.
A. The port engineer gave me orders to have the steam killed.
792 Q. That is on the "Fairland"?
A. On the "Bienville" the same way.
Q. Did he also give you orders to lay off the men?
A. I don't think he gave any orders to lay off the men.
Q. You did that of your own accord?
A. I think I took that on myself.
Q. Did he Okeh it?
A. Well, he didn't put them back to work. He didn't know anything about it. I told him what I was going to do and he never said anything about it.
Q. You were really violating your authority, then, weren't you?
A. Well, I may have.
Q. Do you know from whom the port engineer got orders to shut off the steam?
A. No, sir.
Q. Now, I believe you stated—I am a little bit confused on this, and I wish you would straighten me out—that the "Bienville" went into drydock; that it was cleaned and painted and you rewooded the stern bearing, is that correct?
A. Yes.
Q. And you removed the propeller shaft and did quite a few other things, which you mentioned there?
A. Yes, sir.
793 Q. Now speaking for a moment with reference to this cleaning and painting, was that only below the water line that you cleaned and painted?

A. Only below the water line, up to the light-load line.
Q. You did not do any cleaning and painting above that?
A. Not to my recollection.
Q. You don't know whether you did or not?
A. No, I don't think we did.
Q. You don't know?
A. No, sir; I am not positive.
Q. Who did that work?
A. I don't think it was done.
Q. Who did the work below and up to the light-load line?
A. The shipyard men.
Q. The Alabama Shipyard?
A. The Alabama Shipyard.
Q. That was contracted out, in other words?
A. Yes, sir.
Q. Now, isn't it a fact that either while the boat was in drydock, r while it was out, I believe you called it out in the yards, isn't hat correct——
A. Yes.
Q. That you had some work done?
A. Yes, sir.
Q. And do you have that list of the work that was done there?
A. Yes, sir.
Q. May I see it?
A. Yes, sir.
Q. What on here was the greatest amount of work? I see here in-talling a fan in the second mate's room. I take it that that is a light job?
A. I just skipped that. It is only a few minutes' work to install hat.
Q. What work was it that required the greatest number of man-ours?
A. Let me see that list and I will tell you.
Q. Surely. (Hands list to witness.)
A. (Witness examines list.) Overhauling the steering gear would ake quite a little time.
Q. Do you have any idea how many men worked on that?
A. Possibly about four.
Q. That was done in the Waterman shops?
A. Yes.
Q. And it was done under the direction of some skilled man?
A. Some skilled mechanic.
Q. And he was in charge and he used other men and machinery o do the work?
A. Yes, sir.
Q. That was the general procedure?
A. Yes, sir.
Q. You have a foreman and workmen who work under him?

795 A. Yes.

Q. Now, those men who were working on that, Mr. Ingram—I am not speaking of the man who was in charge, but the men who were working on it—did they possess any peculiar ability for that job which the men who were working in the engine room on the boat did not have?

A. Yes.

Q. Can you tell me just exactly what?

A. They are skilled mechanics.

Q. They are skilled? The men who were working under the man in charge are skilled mechanics?

A. Yes.

Q. More skilled than the men working in the engine room?

A. That is the men, the unlicensed personnel.

Q. All right, now, go ahead. That took four men, you say?

A. Approximately four men; yes, sir.

Turning down lathe motor commutator, dismantling it and taking it out and turning it down, bringing it back and assembling it, requires an electrician to dismantle it and a machinist to turn the commutator down.

Q. Mr. Ingram, outside of special work like that, is it not true that there was a good deal of cleaning-up work, scraping and removing of rust, and small alterations, and general rough work along that line, that was done on the boat?

A. I don't remember that there was; no, sir.

796 Q. Are you sure there was not?

A. I am not positive. I don't remember if there was any of that work or not.

Q. Nothing was done but highly specialized work?

A. Except what is on this list. All of this list is not highly specialized work.

Q. That work, which is not highly specialized, could the members of the crew have done that?

A. No, sir.

Q. In other words, you are saying that there is absolutely no work there that the members of the crew could have done?

A. On this list?

Q. Was there any work which they could have done?

A. Sure.

Q. Then, you don't mean to contradict any testimony that members of the crew could have done it?

A. No, there is always work that can be done on a ship.

Q. By the members of the crew?

A. Yes, sir; but you can always postpone that work, such as cleaning and painting.

Q. And this work could be postponed?

A. No.

Trial Examiner SEAGLE. It was not postponed in this case. I believe you said the cleaning and painting was done.

The WITNESS. The cleaning and painting on the bottom of
97 the ship cannot be done while she is in the water.

Trial Examiner SEAGLE. I understand that, but could the
nembers of the crew have done that work?

The WITNESS. We have never done any drydock work, the drydock
would not permit members of the crew to work on the ship.

Q. When did you first find out that the crew of the "Fairland"
ad changed over from the I. S. U. to the N. M. U.? I want you
o think very closely and recollect the first time you were so advised.

A. I don't have any particular recollection of any time I was
nformed.

Q. I don't know whether you are distinguishing between finding
ut and informed.

A. It is the same thing.

Q. You are not trying to distinguish words there on me, are you?

A. Why, no.

Q. And, of course, you do know that now?

A. I did know sometime after, but I can't remember the time,
ut, to the best of my recollection it was after I had given orders,
fter they were paid off.

Q. Isn't it a fact that the I. S. U. representative at Tampa notified
the Waterman Steamship Corporation in Mobile, through its
98 own offices in Mobile, or else directly, that the crew of the
boat had changed in Tampa?

A. I don't remember any such information.

Q. You are not sure that there was any such information?

A. No; I am not sure.

Q. You are not sure just how you got the knowledge?

A. No; but I am positive it was after the ship came in.

Q. You are positive of that?

A. After the ship came in.

Q. Are you willing to swear to that right now?

A. I am pretty sure it was.

Q. Are you willing to swear to it?

A. I was speaking from memory, it was some time ago.

Q. I realize that, and I am just asking now if you have sufficient
ecollection of it to swear to it now?

A. No; I do not have sufficient recollection to swear when exactly
got my information.

Q. In other words, looking back now, you are not sure whether
ou got it before that ship reached Mobile or after?

A. No; I can't say whether it was before or after. I am pretty
ure it was after.

Q. You say you told the Captain, before he left, that the boat
as going into drydock?

Trial Examiner SEAGLE. I don't understand your answer when
ou say you can't say it was before or after, but you are sure it was
after.

99 The WITNESS. I am almost positive it was after.

Q. All right, we will come back to my original question, Mr. Ingram. Are you willing to swear that it was after?

A. Not being absolutely positive, I cannot swear.

Q. It is too far back?

A. Yes.

Q. You are not sure?

A. Yes.

Q. I believe you testified that this drydocking of the "Fairland" was contemplated when the boat went out, is that true?

A. Yes.

Q. Did you inform the Captain, before he took the boat out on the previous voyage, that you were going to put it into drydock?

A. To the best of my recollection.

Q. Did you hear Captain Norville's testimony?

A. Yes.

Q. Did you hear him state that he did not know, until he reached port on that voyage, that the boat was to be put in the yards after it was in drydock?

A. He said he got his information in Tampa, wasn't that what he said?

Q. No, sir.

A. Well, to the best of my recollection, like I said at first——

800 Q. Did you hear him say that, that was the question?

A. Yes, sir.

Q. Was that wrong or right?

A. I should say that that was wrong. I think, I wouldn't swear to it, but I think I told him and the chief engineer.

Q. You told him when?

A. Previous to sailing from Mobile.

Q. That the boat was not only going into drydock——

A. No; into drydock, I didn't tell him——

Q. My question is this: Captain Norville testified, to the best of my recollection, although the record is clear on the point, that he did not know until he reached Mobile that the boat was not only going into drydock, but was to be tied up for repairs?

A. Well, as far as tied up, I did not have any plans to tie it up previous to sailing.

Q. In other words, the tying up were carefully guarded plans?

A. No, sir.

Q. When were these plans formulated?

A. I can't say, it was after that——

Q. Do you mean after he left Tampa?

A. I can't be positive, but we make these quick changes.

Q. You are capable of making quick decisions, aren't you?

A. Sometimes you have to be careful when you do make them.

801 Q. You are not testifying that these plans were not made before the boat left Tampa, are you? Your recollection is they were made before the boat left Tampa or after——

A. I am not.
Q. But you cannot fix the date?
A. No, sir.
Q. Who made the plans?
A. I can't exactly say who made the plans.
Q. Did you?
A. I might have been in on the making of the plans, yes.
Q. Were you or weren't you?
A. I don't remember that.
Q. Do you know who else may have been in or may not have been in on the making of the plans?
A. Yes; Mr. Lemon may have been in, if he was in town.
Q. Do you remember whether he was or was not?
A. No, sir.
Q. In other words, you don't know who made the plans?
A. If the plans were made they were made between he and I and Captain Nicolson.
Q. And you don't remember when they were made?
A. No, sir.
Q. All of a sudden they were made?
A. No; I don't think they were made all of a sudden.
Q. They were in existence when the boat reached Mobile?
802 A. They existed when the ship reached Mobile, I guess.
Q. You had the plans then?
A. Yes.
Q. And just how long before did you have them, do you know?
A. I don't remember exactly the number of days; no, sir.
Q. Now, Mr. Ingram, you stated, I believe, that, with reference to the work that was given these men in the shops, that it was customary to do that?
A. What is that?
Q. With reference to the work given these N. M. U. men in the shops, you stated it was customary to do that?
A. Yes, sir.
Q. Those men worked on the boat?
A. Yes.
Q. Then, it is customary to use the crew for work on the boat?
A. Through the shop pay roll.
Q. Well, that is just office procedure, putting them off to one pay roll from the other?
A. No; it was—it was office procedure, but we do it in all of our cases.
Q. You did it for your own convenience; it is more bookkeeping procedure?
A. Well, you might call it that.
Q. These men don't have to do anything different simply
803 because their pay roll is in the shop as distinguished from the boat?

A. Yes; they do.

Q. What is different?

A. On the ship when they are working, they have to stand their watches.

Q. Well, you never stand watches on boats in drydock?

A. Sometimes they do; yes.

Q. When it is tied up for repairs?

A. When it is tied up for repairs they have to do it some nights.

Q. Then the classification of watches does not enter into it?

A. No.

Q. You said it was customary to give the crew this work?

A. Not all.

Q. Well, you stated it was customary to give the crew this work if they wanted it?

A. Some of them object to working in the shore gang and not working on the ship at the same time.

Q. It is continuous employment, when the boat comes and goes; when the boat comes in they do work; when the boat is loaded and unloaded, and they go and sail again?

A. No.

Q. Wherein am I wrong?

804 A. When the ship comes in they are paid off.

Q. That is right, they are paid off for their voyage; their back salary?

A. Yes, sir; and then, if they want to go to work; if they want to, they can go to work in the shop.

Q. How soon do they start? If you are going to put the boat right in for repairs, they stay on the boat; don't they?

A. Not necessarily; they have to come down and go through the procedure of being paid off.

Q. And you go through the motion of hiring them again; don't you?

A. No, sir.

Q. Well, who hires them?

A. The foreman.

Q. There is no fixed procedure?

A. No.

Q. Isn't it really just taking them off the boat?

A. No; the foreman picks men out; the men he wants.

Q. Of the crew?

A. Or any other men that happen to be down there.

Q. Do you give the crew preference over men who are not working?

A. Provided they have seniority, yes; if they have seniority, we give them preference.

Trial Examiner SEAGLE. I don't think I fully understand
805 that. Will you explain it to me?

The WITNESS. We try to work the seniority system. We work the oldest man first, and keep them the longest; we take them

in there, and if there is work, and there is no older men, we take the next in line and the next man; we pick them out.

Q. Comparing a crew on the boat that has just come in, with a crowd of men who were not working on the boats; would you use that crowd of men—let me put it a little differently. The boat got in from Europe, and the crew on it; you are satisfied with the ability of the entire crew, and the entire crew wants to work, and there is work to be done. Then, there is also a number of men who are not working for you, applying for work; would you naturally use your experienced men, or your crew, in preference to the mere applicants for work?

A. Well, you see, when you are hiring your men to do that work, machinists; those men are not qualified machinists.

Q. Let us speak of work that they can do. Limiting my question solely to that. Do you understand my question?

A. I don't know; I think I do.

Q. Will you answer it?

A. (No answer.)

Q. Why do you hesitate, Mr. Ingram; isn't my question clear?

A. Well, I cannot say that; we don't give any man preference up there because they belong to the crew of the ship.

806 Q. Do you mean, then, that two men, of equal ability, one a member of the crew and one man who has never worked for you, that it does not make any difference to you who gets the work?

A. We seldom have men up there who never worked.

Q. I am asking you about your custom; your customary procedure.

A. In a case like that, you take the man you know what he can do.

Q. That is my question; would you give the crew preference over the men who did not work for you?

A. Yes.

Q. I believe you have stated, and there has been previous testimony, that you passed out word to the crews of the "Fairland" and the "Bienville," by the grapevine, or your customary way, to let it be known, generally, that crews could come back to work; is that right?

A. Yes, sir.

Q. Why did you pick out those two crews?

A. I did not pick out those two crews.

Q. Didn't you testify that you let it be generally known?

A. Well, it was generally known anyway, and I told all them that were down there, if they wanted to come back, they can come back.

Q. Didn't you state that you passed word around that the crews of the "Fairland" and the "Bienville" could come back and go to work?

807 A. Yes, sir.

Q. Why did you pick those two crews?

A. I did not pick them for any special reason.

Q. But you did pick them?

A. Yes.

Q. Were you trying to be fair with the N. M. U., is that what you were attempting?

A. I tried to be fair with every man.

Q. I mean, I am talking about these two crews; was that your thought there?

A. I never gave it any thought, and when I told the men it was a matter of course.

Q. You just happened to think of those two crews for that reason?

A. That is—those were the only two ships in port at that time.

Q. There were other men there who were working for you?

A. Well, I don't know.

Q. You know, as a matter of fact, there were men who had worked in your shops besides the crews of those two boats, who were not working on the day when you sent for these men?

A. I did not send for them.

Q. Well, that you let it be known generally?

A. Yes.

Q. You knew that, didn't you?

808 A. That they could work on the job?

Q. You knew there were other men that had worked in your shops who were not working then?

A. Yes.

Q. But you picked out the "Bienville" and the "Fairland" crews and sent special word to them?

A. When there is a ship tied up there, I send word out, and I sent word out to that crew.

Q. But you did distinguish there, didn't you?

A. Yes.

Q. Was that on your own judgment, or were you so instructed?

A. No; that was my own judgment.

Q. You didn't receive any orders to do that?

A. No.

Q. Now, you say you did it in your customary way. When did you send word out, do you know?

A. I don't know. I should imagine the same day we told them we were going to lay the ship off.

Q. The "Fairland" got in on the 6th, didn't it?

A. I don't remember the date.

Q. Well, I think it has been testified that the "Fairland" got in on the 5th and the "Bienville" on the 6th?

A. Yes.

Q. You don't remember just when you sent this word out?

A. No, sir.

809 Q. But if you had not sent out word, but had told the men when they were being paid off, then, more of them would have known about it?

A. I think I did tell them as they were being paid off.

Q. Don't you remember, Mr. Ingram, that it was two days later, or one or two days later that you told somebody to go down to the N. M. U. Hall and tell the men?

A. No, sir.

Q. Or get word around to the men?

A. No, I did not.

Q. You don't know just what you did on that?

A. No.

Q. And if there is testimony here as to how that word got out, you don't mean to be contradicting it now?

A. No.

Q. Mr. Ingram, were you at the hearing when Mr. O'Connor testified?

A. Yes, sir.

Q. You heard his complete testimony?

A. Yes, sir.

Q. And I think you have admitted on your direct examination that you told Mr. O'Connor over at Gulfport to get off the boat and to take his vacation when he got to Mobile?

A. Yes; that is right, that was after he had talked over various other things and—I cannot remember all the conversation.

Q. But in the course of that conversation you told him that?

A. Yes, sir.

Q. And is it not also true that, before he sailed on that particular trip, the two of you discussed his getting a coastwise boat and you told him you would try to get him one?

A. I did.

Q. And is it not also true that over in Gulfport you told him you had something else for him?

A. I did.

Q. And you also suggested to him that he take his vacation when he got here?

A. Yes.

Q. And you would get his overtime straightened out?

A. Yes.

Q. And then he would get his coastwise ship, or words to that effect?

A. Yes.

Q. Then he did not get his vacation, did he?

A. No; he got his vacation, but not his vacation pay.

Q. Well, without pay, he wasn't getting a vacation, was he, in your life?

A. No.

Q. As we are discussing it?

A. No.

Q. Got no vacation?

A. No.

Q. Then, your customary rule applying to men who take their vacation, to call you when they are back from vacations, would not apply?

A. Oh, no; it would still apply.

Q. How would that apply when you knew from the very beginning, after he once got on shore, didn't you, within two or three days, know that he had no vacation coming?

A. Yes, sir.

Q. Then you knew he was not on vacation?

A. No; I didn't know he was not on vacation.

Q. But you knew he was not getting his vacation pay?

A. He has a habit of taking off two or three months at a time.

Q. But you were discussing vacations.

A. I know, but he has a habit of taking a vacation every three months.

Q. Do you want to go into the details of that? Are you making a general characterization there, that he does take a vacation every two or three months?

A. Well, he does very often; he doesn't work very steady.

Q. Are you criticizing his work?

A. No, sir.

Q. You have no objections against the man's work?

812 A. No, sir.

Q. And any time he has taken a vacation, it has been taken, of course, on proper application made?

A. Yes.

Q. And permission granted?

A. Yes.

Q. And in this case you suggested to him that he take his vacation; isn't that right?

A. At that time I suggested to him that he take his vacation, frankly, but we had talked about taking a vacation sometime before.

Q. What do you mean sometime before?

A. Well, he talked of getting off for a vacation, and that is where the conversation came up for me to tell him about taking his vacation when he got to Mobile.

Q. When had he talked about taking a vacation?

A. To the best of my recollection, he talked of it during a conversation back—when we had a conversation before his previous trip.

Q. But as to this conversation over in Gulfport, when the boat got in, you are not stating that you did not suggest to him that he take his vacation when he got in to Mobile?

A. No; I am not stating that I did not suggest it.

Q. You really thought he would get off the boat?

A. Yes.

813 Q. And isn't it customary, when a man is not taking his vacation, but is just simply not working, for cause—and I am drawing a distinction between a man who is on vacation and a man

who is available for service as an engineer—in that case you call the man?

A. Yes.

Q. And your office has called Mr. O'Connor many times, haven't you?

A. Yes, sir.

Q. To take work?

A. Yes.

Q. But you have not called him since this incident happened?

A. Well, on all occasions before, when a man is ready to go to work he reports to me by telephone, or by coming up to the dock to see me.

Q. But if a man got off of a boat relying on a vacation that he was told was coming to him, and it developed in two or three days that he had no vacation coming to him, wouldn't you carry that in your mind that that man was on vacation and could have his boat when it went out again?

A. Not necessarily, he may not be ready to go to work.

Q. Wouldn't the presumption be that the man was ready to go to work?

A. No.

Q. If he was taken off a boat and given a vacation, and his
814 boat went out before he came back, you say the man might not be ready to go to work?

A. Yes, sir.

Q. Have you put any new engineers on in the fleet?

A. No; I don't think I put on any new ones.

Q. Have you replaced any men that have been off a long time?

A. No; I don't think I put any on that have been off a long time.

Q. When was the last new man placed on as an assistant engineer—I believe this is a second engineer; do you know?

A. The latest one; no, I can't say.

Q. You have put some on, though, within the past few weeks, haven't you?

A. Not that I can remember now.

Q. But you are not sure you have not?

A. No.

Q. Now, it has been testified that Waterman has bought two or three new boats lately?

A. Yes, sir.

Q. Where did you get the crew and the officers to run these?

A. Off various ships.

Q. You did not reduce the number of men on other ships in order to man these ships?

A. No; but you can promote a man.

815 Q. There have been promotions?

A. Yes; there have been promotions.

Q. Since Mr. O'Connor was invited to take his vacation?

A. Yes.

Q. These men have been promoted from what to what?
A. Well, some have been promoted from third to second and from junior to third.
Q. And is there such a promotion as from seaman to junior?
A. Yes.
Q. And have there been any of those?
A. Yes.
Q. All since Mr. O'Connor left?
A. Yes.
Q. But you have not called him to see if he wanted to go out?
A. He never reported in to me that he was ready to go.
Q. Did you ever call him?
A. No, sir.
Q. And he has had about seven years' experience?
A. Yes, sir.
Q. You have promoted new men?
A. There is nothing wrong with that.
Q. I am not saying there is.
A. Well, he never had made application for work. I have a case where I have a man off now for that same reason.
816 Q. You mean you invited him to take a vacation, and he did not make application to come back?
A. No; and I took him off a ship for another man.
Q. And you put another man on?
A. Yes.
Q. And what are you doing with this man?
A. He is working in the shop, just like O'Connor.
Q. Has O'Connor been working in the shop?
A. No, sir.
Q. Since his vacation?
A. No, sir.
Q. You never offered him any work?
A. No, sir; he has not reported.
Q. Never offered him any work?
A. No, sir.
Q. Did you have a conversation with him about going back to work?
A. No, sir.
Q. Did he ever ask you about coming back to work?
A. In a casual conversation on the street.
Q. Do you have to be in a building, or do you have to be sitting down, or something like that, to consider it formal?
A. No, sir; but I don't consider that talk a formal request.
Q. Why.
A. On the street? No, sir; I was just kidding with him on
817 the street.
Q. You did not consider it formal?
A. No.

Q. And you don't know whether he was serious or not?
A. I don't think he thought that, either.
Q. But, if he was, then, you have done the man an injustice?
A. No, sir; I haven't done him any injustice.
Q. You have not called him since?
A. No.
Q. And you put a new man on?
A. Yes.
Q. But you did not call him?
A. He has not applied.
Q. I thought you said he had a conversation with you on the treet?
A. Yes.
Q. Are there some magic words which he has to use in applying?
A. No, sir.
Q. Didn't he use the right words?
A. He did not say about being ready to go to work.
Q. Didn't he ask you about going to work?
A. No, sir; he said "would Waterman give me employment." He id not mention it direct.
Q. Then, you are just distinguishing on the verbiage he used, is that right?
A. No.

Examination by TRIAL EXAMINER:

Q. What did you say; what did you tell him?
A. I told him I could not answer him.
Q. Well, what else did you tell him?
A. I don't want to be quoted on what he said on the street.
Q. Didn't you have authority to hire him?
A. Yes.
Q. And you told him you could not give him an answer?
A. Yes.
Q. Why did you tell him that?
A. Because I wasn't going to give him an answer on the street. If asked me, if he was ready to go back to work——
Q. What did you mean when you said he was just kidding?
A. I was just joking with him.
Q. Well, what did you say and what did he say that led you to lieve you were joking?
A. I don't recall the conversation now.
Q. Do you regard a conversation about a job as a joke?
A. No. He was not working.
Q. What was it occurred that led you to say you were kidding? id you regard his question as to the Waterman Steamship Corpotion giving him a job as kidding?
A. Yes.
Q. You thought that that was a fantastic request?
A. Yes.

Q. What made you think it was so fantastic?
A. Just the way he asked it, and the way that I was talking to him.
Q. Well, what was the way you were talking to him?
A. Well, in a joking manner, in a joking mood.
Q. Was he joking?
A. I think he was.
Q. Was he laughing when he asked you whether the Waterman Steamship Corporation would give him a job?
A. I think he was; yes, sir.
Q. There cannot be any question of thinking, was he or wasn't he?
A. To the best of my recollection, we were both laughing and kidding about it.
Q. Were you laughing because you thought it was improbable that the Waterman Steamship Corporation would give him a job?
A. No, sir; it was not improbable.
Q. What made you say it was fantastic?
A. Just from his attitude.
Q. You didn't think he really wanted the job, is that right?
A. That is right, he really didn't want the job.
Q. And you think, of you thought he only wanted the job only if he would come to your office?
A. No, sir; he didn't have to come to the office, all he had
820 to do is telephone me and tell me.
Q. And in that way he could tell you?
A. Yes, sir.
Q. Didn't he tell you on the street?
A. Well, he didn't say he was ready to go back; he asked for employment.
Q. He had to use a certain form of expression, is that it?
A. I did not say he would have to use a certain form to ask me, and I would not if I went to you for a job and asked you about a job, or something like that.
Q. And when he asked you for a job he said, "Do you think the Waterman Steamship Corporation would give me employment," is that your testimony?
A. Yes.

By Mr. Hoskins:

Q. There has been some question of vacations here, Mr. Ingram. What is the company rule on vacations?
A. Twelve months at sea.
Q. What happens after twelve months at sea?
A. At the end of that twelve months they are given a vacation of 15 days, if we can give them that time off, up until the last two months of the year, and if we cannot give them the time off by the last two months, we pay them in cash.
Q. That applies to who?
A. To the licensed officers.
There is no vacation given to your unlicensed personnel?

821 A. No.

Q. And when you testified that you understood it was Mr. O'Connor's desire to leave the ship; you understood it was his desire to take this coastwise ship, didn't you, that you had promised him?

A. Yes.

Q. Now, I believe I asked you when was the first time you found out that the crew of the S. S. "Fairland" changed from the I. S. U. to the N. M. U., and you testified on that. Now, when did you first find out that the crew of the "Bienville" had changed from the I S. U. to the N. M. U.?

A. Sometime after she arrived in Mobile, to the best of my recollection.

Q. Some time after she arrived at Mobile?

A. Yes, sir.

Q. And at that time you laid her up, is that right?

A. Yes.

Q. Now, you stated, I believe, that the plans to lay up the "Bienville" were made while the boat was on its way back to the United States, is that correct?

A. To the best of my recollection.

Q. That was after the boat left Le Havre, France?

A. Well, I wouldn't say that.

Q. Well, it was on its way home back to the United States, it may have been?

822 A. It was during the course of the trip. When she leaves she has got to go over and get back.

Q. You don't mean on its return voyage?

A. Yes; I mean on its return voyage.

Q. In other words, you do mean after she had left Le Havre, France?

A. I imagine it was.

Q. Now, you say you imagine, do you or don't you?

A. Yes; that is what I understood.

Q. Now, is that when the first plans were made to lay up the boat and have it repaired?

A. No.

Q. How long back was that contemplated?

A. Ever since we had it we had been contemplating that.

Q. Was that general repairs, or were any steps taken toward it?

A. We had taken steps.

Q. What steps had you taken?

A. We had ordered material.

Q. When did you order material?

A. I can't say.

Q. What material did you order?

A. We ordered steel for the deep tank.

Q. Do you know whether that steel was ordered for the "Bienville" or her sister ship, the sister ship of the "Bienville"?

823 A. I can't say positively which one it was for.

Q. Well, then, you don't know whether you ordered the steel for the "Bienville," do you?

A. I can't say positively, but the stuff was ordered and the same thing applies to the "Azalea City" now. We got stuff ordered for her.

Q. Is this stuff ordered now for the "Azalea City" or the "Bienville"?

A. I don't know.

Q. In other words, you don't know how long previously plans had been made to tie up the "Bienville"?

A. We had plans ever since we had her.

Q. General plans?

A. Yes, sir.

Q. When did those specific plans originate to tie her up after this voyage?

A. Depending on traffic conditions; depending on the traffic department.

Q. But plans were made all of sudden when the boat was on its way back?

A. No, sir.

Q. To tie it up definitely after that particular voyage?

A. No.

Q. The plans to tie up at the end of that particular voyage originated while the boat was on its return back to the United

824 States?

A. No; I can't say that, but that was the best information I had on it.

Q. Who had all this information, do you know?

A. I don't do that when Mr. Lemon is in town, he gets in to the traffic department to find out when they can let him have a ship.

Q. Did you or did you not get it from the traffic department?

A. No.

Q. Did Mr. Lemon?

A. I don't know.

Q. When did you first get notice that the boat was to be tied up?

A. While the steamer was on the way here.

Q. Who did you get it from?

A. From Mr. Lemon.

Q. You are not sure of that?

A. I am almost positive.

Q. You are not sure?

A. I think that is who I got it from.

Q. Do you know that you got it from him?

A. Yes.

Q. Would you, in the course of events, get it from anybody else?

825 A. No; not very well.

Q. Does the order to tie up for repairs ever come through anybody else?

A. Occasionally, if Mr. Lemon is out of town.

Q. And who would they come from in his absence?

A. Through Captain Nicolson, occasionally, if Mr. Lemon is out of town.

Q. And occasionally, when Mr. Lemon is out of town, you decide that question, is that right?

A. No.

Q. Occasionally?

A. Occasionally, yes.

Q. In other words, when Mr. Lemon is not there it is passed by, whether you decide it or whether Captain Nicolson decides it——

A. No; it is not passed by. If it is a minor case, I decide it, but if it is something of a major nature, I will consult with Captain Nicolson.

Q. Is time a factor in determining whether it is minor or major?

A. Yes, sir; I would consider time a major factor.

Q. What period of time would you say is the dividing line between minor and major?

A. I would state—I cannot say the period of time between minor and major.

826 Q. Well, you say it is a factor. Didn't you just set time as a factor?

A. Yes.

Q. Well then, what period of time makes it a minor repair and what period of time makes it a major problem?

A. What period of time makes it major?

Q. What period of time makes it a minor problem that you will decide, or a major problem?

A. In the ordinary course of my own repairs?

Q. What do you mean by that?

A. Putting in piston rings, I would suggest that.

Q. How long does that tie the ship up?

A. It is done while we are loading or unloading.

Q. And whom do you go to if you have a major problem?

A. I go to Mr. Lemon, if he is in town, and notify him I have to hold the ship.

Q. And do you know if Mr. Lemon goes to the Captain in question?

A. I don't know, I don't know positively, but I should say he would.

Q. Mr. Ingram, in answer to some questions put by Mr. Johnone, you stated that having been with Waterman's since 1922, and on the basis of that, in 1936 you knew that a majority of the men were S. U. men, is that right?

A. Yes.

827 Q. Do you have any records, or did you make any check to determine that?

A. I do not have any records; no, sir.

Q. Did you make any check?

A. The only check I made was when they are paying ships off, or shipping a crew.

Q. What check do you make then?

A. When they are paying them off I see all the men pay their dues, and when men were shipped, when there were vacancies, they all had to have I. S. U. membership cards.

Q. Is that one of your duties to police the men to see that they pay their dues?

A. No, but at one time we used—I used to sit at the pay table and watch them pay off.

Q. Do you still do that?

A. Not all the time.

Q. You do sometimes?

A. Yes, sir.

Q. Do you do it in the course of your work?

A. No.

Q. Did you do it in the case of the "Bienville"?

A. No, sir.

Q. Are you sure you did not?

A. To the best of my recollection I did not.

Q. But you are not sure?

828 A. No.

Q. Were you around there at all?

A. I was around the ship; yes. I am around the ship most any time.

Q. When they pay off?

A. When they pay off, and I am there about twelve to fifteen hours a day.

Q. So you do remember standing by the pay line?

A. Not the pay line; the pay table.

Q. And you would watch to see if the men got their I. S. U. books?

A. I could see that, they would collect the books when they came aboard.

Q. There was enough action there to attract your attention?

A. Yes.

Q. And to have you make some mental observation?

A. Yes, sir.

Q. And to make a mental calculation of how many did and how many did not?

A. No; I didn't make any mental count.

Q. I am just trying to determine how you figure that the majority of the men were I. S. U.

A. When the ship comes in the I. S. U. delegate collects all the books and he makes out a slip of what is due and collects it from the men before he gives their books back.

829 Q. In 1936, the early part of 1936, did all of your ships come in and pay off around March?

A. No, they didn't all come in and pay off around March.
Q. Well, then you are speaking only with reference to a few vessels?
A. The vessels I happened to be on board.
Q. And how many, about, was that?
A. It was probably six to eight sailings; there is about six to eight sailings.
Q. And then you watched six or eight pay-offs around March 15th or 16th?
A. Yes, sir.
Q. And Waterman had 24 boats at that time?
A. At that time I don't think they had quite so many.
Q. Now, you stated, I believe, as these vacancies occur you call the I. S. U. Hall for most of the men?
A. Yes, sir; for most of the men.
Q. For what men don't you call on the I. S. U. Hall?
A. We don't call the Hall for licensed men.
Q. Those are the only men you don't call the Hall for?
A. Yes.
Q. For every other vacancy which occured on the Waterman boats since you signed this contract, you called the I. S. U. Hall?
A. With the exception of the position of cadet, that comes
829 through the office.
Q. Mr. Ingram, in this seniority system in the shop, is that seniority based on shop experience or total experience with the Waterman Steamship Corporation?
A. Based on shop experience.
Q. You limit it only to shop experience; shop service?
A. For that seniority system in the shop, yes.
Q. In other words, a man might have worked 20 years for you on your boats, but he does not have as much seniority as a man who worked one day in the shop?
A. We have a good many who have been with us in the other departments, who have been with us 20 years in the other departments.
Q. I am asking you if that is your policy or your routine or procedure, if that situation could exist?
A. It could exist; yes.
Q. Now, this statement that you made to Mr. Stewart and to others, in answer to their question, where you told them that they could not sail again with their N. M. U. books, or whatever your testimony is, you made some such statement, is that right?
A. Yes.
Q. That was based on your interpretation of the contract?
A. Yes, sir; on my interpretation of the contract.
Q. And did you have the advice of counsel in making that
831 interpretation?
A. No.
Q. Did you have the advice of anyone?
A. No.

Q. You were not so instructed by Captain Nicolson?
A. It is plain in your contract there.
Q. That does not answer my question.
A. I was not instructed by Captain Nicolson, no, sir.
Q. You were told, I think, by someone, I don't know whether it was brought out by who or not, that there were men on the ship who did not go N. M. U.?
A. There were some few men that did not go N. M. U.
832 Q. Two or three, possibly?
A. Yes, sir.
Q. Don't you know, as a matter of fact, that those men resigned at the end of the voyage and expressed no desire to sail again?
A. No.
Q. You don't remember that?
A. No, sir.
Q. But you are not sure?
A. They never said anything to me about it.
Q. They would not have to speak to you about it, would they, according to your testimony?
A. No.
Q. Mr. Ingram, one statement here, what do you call the yard where you put the boats that are out of commission, that you have definitely out of commission for any period; is that generally known as the bone yard?
A. The bone yard.
Q. Is that right?
A. There is a term used like that.
Q. What is the terminology used to express that?
A. Well, during the depression the shipping board had what they called a bone yard up the river where they put ships up and left them there.
Q. Just left them there for several months?
833 A. Yes, sir; indefinitely.
Q. What is the procedure, do you keep one man aboard there?
A. Yes, sir; a watchman.
Q. In other words, if three men would stay by three ships, it probably would be in the bone yard, if that situation existed?
A. Well, if three ships were tied together one man could look after them.
Q. There is no other place where one man can look after three ships; there is no other place that that could be done, is there?
A. Not that I know of.
Q. Have you ever been a member of the I. S. U.?
A. I was at one time a member of the Marine Firemen, Oilers and Watertenders Union.
Q. They became an affiliate of the I. S. U. just about the period of this contract?
A. Yes.

Q. Were you ever in the M. E. B. A.?

A. Yes.

Q. You stated that you have always called the I. S. U. hall for your unlicensed personnel, is that right?

A. Yes.

Q. Why did you do that?

A. According to our contract they were to furnish all
834 vacancies.

Q. Does the contract state in any place that you were to call the I. S. U. hall?

A. No; it does not state that we should call the I. S. U. hall.

Q. Do you recognize any distinction between a closed-shop contract and a preferential contract?

Mr. JOHNSTONE. Mr. Examiner, I think he should make the question more clear as to what he means by each one of those terms. I don't know whether everyone is familiar with what those terms are.

Trial Examiner SEAGLE. My understanding is that Mr. Hoskins is trying to obtain the witness' explanation of those terms.

Q. What do you understand by preferential contract?

A. A preferential contract is that you are to hire your men from the association as long as you have a contract and they can furnish them.

Q. What is your idea of closed shop; a closed shop contract?

A. That you must hire all the men.

Q. Do you distinguish the two; is there any difference?

A. At times there is and at times there is not.

Q. Well, in your definition?

A. What the definition of it is and what you think of it is a different thing.

Q. Well, as a matter of fact, if you always call the I. S. U.
835. hall, you actually have a closed shop contract, don't you, a contract that operates the same as——

Mr. MCCORVEY. Mr. Examiner, I think he should ask him what it is without trying to give a legal definition.

Trial Examiner SEAGLE. Is that an objection?

Mr. MCCORVEY. Yes; I think all the witness should be asked is what he did, and he asked him when he called them, whether, in his opinion, this is a closed shop contract or a preferential contract.

Trial Examiner SEAGLE. That may be preliminary to explaining what he did. I think he can testify to what he did, in order to get his understanding of what he was supposed to to. Answer the question.

The WITNESS. So long as the I. S. U. can furnish men we have to take their men.

Q. If this had been a closed shop contract, you would not have done anything different, would you; a closed shop contract as you understood it, when you gave the definition a moment ago, you would not have done anything different?

A. No; I would not have done anything different.

Mr. Hoskins. That is all.

By Mr. Howard:

Q. Mr. Ingram, before you took the position that you now have, you had gone to sea, hadn't you?

A. Yes.

Q. How many years had you followed the sea?

836 A. Approximately fifteen.

Q. Did you ever sail on deck or always in the engine room?

A. In the engine room.

Q. You are familiar, then, with the employees, the methods of employing what is common known as the black gang in an engine room crew?

A. Yes.

Q. You yourself have employed such men to work on ships?

A. Yes.

Q. And it is part of your duty, is it not, with the Waterman Steamship Corporation now to supervise and to manage for the different ships of the line the question of employing these men?

A. How is that, now?

Q. It is part of your duty to supervise and to handle this matter of employing members of the crew to go into the engine room; the unlicensed personnel?

A. Yes, sir; I supervise that.

Q. In your work in supervising and handling them, do you have anything to do with informing the different chief engineers of your ships with respect to the obligations of the Waterman Steamship Corporation under their contract with the International Seamen's Union?

A. Yes.

Q. What instructions did you give them with respect to the preferential right, if any, of the International Seamen's Union to be employed in the engine room?

837 A. I told them to hire all I. S. U. men.

Q. Now, I will ask you, Mr. Ingram, from your experience at sea and your handling this matter of employing men, do you know or have you ever heard before this trial of any right of a member of the engine-room crew, after being paid off and discharged, to be reemployed on that same ship for another voyage?

A. He has no right; no.

Q. Now, if he had been a good man, you sometimes do employ him to make another voyage?

A. Yes; many times.

Q. Do you know of any right that has ever been claimed by seamen of this port to determine such rights, or claim, as a matter of law, if they can, to make another voyage?

A. I don't know of any claim; no.

Q. Now, with respect to this proposition of handling the matter of employing these men, I understood you to say that you did employ, under this contract, members of the International Seamen's Union?

A. Yes, Sir.

Q. Now, have you ever given any of the chief engineers of your ships the right to employ anybody else except members of the International Seamen's Union?

A. Except in the case of emergency, where they could not get anyone else.

838 Q. Has there come up, since the formation on the Gulf Coast of the National Maritime Union, in this question of reemploying men to make another voyage, when they have gone out from the port of Mobile, made a trip across the ocean to European ports, and during their absence from this port on ship have joined some other union than the union with which you had that contract—has the question come up as to what to do in those cases?

A. Not before; no.

Q. Have you ever heard the right, claimed on behalf of any of these men, or have you ever seen it enforced on any of the Waterman Line Ships, that when a man was employed because of his membership in the International Seamen's Union, and he abandoned that membership on the voyage and joined another union, claim any right to preference to make another voyage on the ship after having abandoned the union with which you had the contract?

A. No, sir.

Q. Have you ever discriminated in the matter of employing these men against members of the International Seamen's Union?

A. I have never discriminated.

Q. Outside of this contract that you have with the International Seamen's Union, is it a matter of any concern to the Waterman Steamship Line as to what labor organization, social institu-

839 tion, or fraternity, or church, the members of the crews on their vessels fraternize with or belong to?

A. No, sir.

Q. You don't pay any attention whatever at all, do you?

A. None whatever.

Q. You don't know of any reason why a man who belongs to the National Maritime Union should not be just as good a sailor as the man who belongs to the International Seamen's Union?

A. No reason.

Q. What is it that leads you to employ one sailor in preference to another?

A. One sailor, as to his ability and his affiliation.

Q. And his willingness to work?

A. Yes, sir.

Q. And experience?

A. Yes, sir.

Q. And seamanship?

A. Yes.

Q. And that sailor's rating and grade, isn't that so?

A. His grade; yes.

Q. Have you ever at any time, in all you experience, employed men for the Waterman Steamship Corporation outside of your contracts, or concerned yourself with what labor union he affiliated with?

A. No, sir.

840 Q. Now, as I understand it, you had some part, either minor or major, in the matter of deciding if certain repairs were to be made to the steamship "Bienville"?

A. You mean a conclusion as to the repairs to be made?

Q. Yes.

A. Not until after the ship got in.

Q. Did you talk that matter over with Captain Nicolson and Mr. Lemon the port engineer?

A. Yes.

Q. Now, in these conversations or conferences, was it ever discussed or brought up by the Waterman Steamship Corporation, or agreed, as far as you know, by any official of the line, that these repairs would be made on this particular trip because the company had gotten knowledge with respect to the crew having changed their membership in a labor union?

A. No.

Mr. HOSKINS. Mr. Examiner, it seems to me that the intervener has gone far outside of the scope of his rights given to him.

Trial Examiner SEAGLE. I think that that is true, Mr. Howard. I think you have gotten beyond the permissible scope of your examination.

Q. Was this particular tying up seized upon because of any animosity or spirit of discriminating against these men because they quit the International Seamen's Union?

841 A. No, sir; never any discussion like that.

Q. Now, in the shops which you have charge of, do you know of any particular obligation to employ any particular man in a particular group, or is it an open shop?

A. It is an open shop.

Trial Examiner SEAGLE. Are you referring to the shore work?

Mr. HOWARD. Yes.

Mr. HOSKINS. We object to that.

Trial Examiner SEAGLE. The objection is sustained.

Mr. HOWARD. We except.

Q. Have you, in the handling of the employing of men that were members of the crew of these different vessels, felt obligated to give any preference to the members who had left employment in the company by having completed a voyage; did you feel obligated to give them a job of any character?

Mr. HOSKINS. I must renew my objection.

Trial Examiner SEAGLE. Sustained.

Mr. HOWARD. We except. I believe that is all.

Redirect examination by Mr. JOHNSTONE:

Q. Mr. Ingram, I believe you testified that Mr. Lemon is the port engineer of the Waterman Steamship Corporation?

A. Yes, sir.

Q. Is Mr. Lemon in Mobile at this time?

842 A. No, sir; he is out of town.

Q. Can you tell us where he is?

A. He is in Philadelphia.

Q. Mr. Ingram, Mr. Hoskins was asking as to when you first knew of the change that the members of the crew had made from the I. S. U. to the N. M. U. on board the "Fairland." To the best of your recollection, did you first know of it at the time the "Fairland" came to port in Mobile?

A. To the best of my recollection I did not know it.

Q. You did not know it until after she came in?

A. To the best of my recollection.

Q. As to the question of when the plans were made to dry dock the "Fairland" when it returned to Mobile, I believe you testified on direct examination that those plans had been made at the time that the ship sailed on the voyage prior to drydocking. That is the best of your recollection, is it not?

A. The best of my recollection.

Q. Mr. Ingram, when a man has changed from the crew, a member of the crew to shop employment, employment in the shops on shore here, is there any change made in the rating of his compensation or the manner of his compensation?

A. Yes, sir; there is a change made.

Q. Is it an entirely different rate of compensation?

A. A different rate; yes, sir.

843 Q. When he is working in the shop is there any question of subsistence allowance as there is on board ship?

A. No, sir.

Q. It is just under a different arrangement and different terms of employment altogether?

A. Different terms of employment altogether.

Q. In other words, it is not just merely a bookkeeping change when a man has changed from the ship to the shop crew, it is more than a bookkeeping change, there is some substantial change in his employment, is there not?

A. There is a change in his employment.

Q. Now, as to this seniority system which you have in the shop, generally, that is applicable for employment in that shop of men who have previously worked there, is that not a fact?

A. It is.

Q. You are not generally confronted with a situation of choosing between hiring men from the crew on one of your vessels and a man who has never worked in your shop before?

A. Seldom.

Q. You are seldom confronted with that situation?
A. Seldom.
Q. Are you confronted with that situation often enough for there to be any particular custom in regard to it?
A. No.
844 Q. You testified that at the time the "Bienville" was tied up here for repairs, and at the time the "Fairland" went on drydock, that you passed out word to the crew that work was available at the shops. Do you usually do this in the case where a ship was in port and the crew had been laid off?
A. Yes, we do that quite often; in fact, in all cases.
Q. You did not make this any special exception, then, in the case of the "Bienville" and the "Fairland," in passing out the word to the crew that work was available in the shop?
A. No exception.
Q. Now, I believe you testified at one time that you told these members of the crews that this work was available either at the time they were being paid off or shortly thereafter?
A. Yes.
Q. Is that the best of your recollection?
A. The best of my recollection.
Q. Now, in regard to Mr. C. J. O'Connor. In your conversation with Mr. O'Connor in Gulfport, was it the substance of that conversation that Mr. O'Connor agreed that he wished to get off the ship in Mobile when it arrived?
A. Yes, sir.
Q. Mr. Ingram, do you know of any reason why it was determined that O'Connor was not entitled to vacation pay after he left the ship in Mobile?
A. On account of his services, his length of service. He
845 only had about six months service at sea.
Q. Six months service at sea during what period?
A. During the period of 1936.
Q. At that time what length of service was necessary in order for a man to be entitled to vacation pay?
A. Twelve months at sea.
Q. At the time you talked with Mr. O'Connor at Gulfport did you know that he only had six months' service?
A. I didn't know it.
Q. Did you think at that time that he was entitled to a vacation?
A. I thought he was entitled to it.
Q. Mr. Ingram, you testified on cross-examination, that Mr. O'Connor frequently took time off from his vessels. Whenever he took time off before he was reemployed, wasn't he?
A. Yes.
Q. Did he always notify you in some way that he was ready to go back to work?
A. Always; yes.

Q. After the occasion of which we have spoken, when Mr. O'Connor left the "Azalea City" in Mobile, did he every notify you that he was ready to go back to work, or that he wanted to go back to work?

A. He never has.

Q. In the conversation which you have testified about, which you had on the street with Mr. O'Connor; did he signify to you in any way that he was at that time ready to go back to work?

A. None whatever.

Q. Did he at that time signify that he wished to go back to work?

A. No.

Q. Was it your understanding of the conversation with Mr. O'Connor at that time that he was merely asking you a question, a hypothetical question, that is; suppose, if he wished to go back to work, would he be hired; is that your understanding of the question?

Mr. Hoskins. I object to that as grossly leading.

Trial Examiner Seagle. I am afraid that that question is a bit leading, but the damage has been done already. What is your answer?

A. What is the question?

Q. (Question read.)

Trial Examiner Seagle. Do you understand what is meant by a hypothetical question?

The Witness. No, sir; I do not.

Trial Examiner Seagle. Then you cannot answer the question.

Mr. Johnstone. I will withdraw that question.

Q. At the time that you had the conversation with Mr. O'Connor in Gulfport, in regard to a coastwise ship, a job on a coastwise ship; did the Waterman Steamship Corporation at that time operate any coastwise ships at all?

A. No; we don't operate coastwise ships. We manage—we are managing agents for a coastwise service.

Q. Mr. Hoskins asked you in detail, Mr. Ingram, regarding the occasions on which you saw the men paid off, and saw them paying their dues to the I. S. U. Did you notice this procedure for several months, that is, say, several months prior to March 1936?

A. On the ships that I was on; yes, sir.

Q. For about how long prior to March 1936 did you notice this procedure?

A. Since we first entered into a contract with them.

Q. And when was that, approximately?

A. I don't remember exactly the date of the contract, but whatever date that was.

Q. Was it approximately one year or just approximately how long? I don't want any definite date.

A. I should say approximately a year; yes.

Q. During all this time of approximately a year you did notice on ships that you had been on, that after the men had been paid off on the ship that they paid their I. S. U. dues?

A. Yes.

847½ Q. Did you notice this on a majority of the ships which were operated by the Waterman Steamship Corporation?

A. On the ships that I was on, I always saw them collecting dues.

Q. During this period of approximately one year prior to March 1936; did you have the opportunity to see the pay-off of many ships of the Waterman Steamship Company?

A. I cannot say the number of ships that I was on.

Q. Would you say that it was a majority of the ships or the greater part of the ships that were owned by the Waterman Steamship Company?

A. I would say that; yes, sir.

Q. Do you know of any occasion during this time, or did you notice, that any members of the crew did not pay dues to the I. S. U. representatives after the pay-off?

A. I did not check that very closely.

Q. But you don't know of any specific instance in which they did not?

A. No, sir.

Q. You usually saw them do it?

A. I saw them pay their dues.

Q. Paying their dues to the I. S. U. representatives?

A. Yes, sir.

Q. Mr. Ingram, on cross examination, Mr. Hoskins asked you if at the time the "Fairland" went on drydock here in Mobile,

848 whether or not the members of the crew who were still I. S. U. members requested that they go out on the next voyage. As a matter of fact, Mr. Ingram, did any members of that crew make any request to go out on the next voyage, so far as you know?

A. I don't remember whether they made any requests or not.

Q. Now, as to this matter of preferential contract and closed-shop contract. I believe you stated that it was your understanding that the contract with the I. S. U., that the contract that the Waterman Steamship Corporation has with the I. S. U., is a preferential contract; is that correct?

A. Yes, sir.

Q. Now, is it your understanding that under this contract the Waterman Steamship Company has with the I. S. U., that if the I. S. U. were unable to furnish them with members of the crew which you needed that it would be all right, under the contract and in those circumstances, to go outside of the I. S. U. to get members of the crew that you needed?

A. Yes.

Q. That would not be permissible under a closed-shop contract, would it, as you understand a closed-shop contract?

A. Even in the I. S. U. they would have to be members before they sailed, they would have to join.

Q. There would be nothing under that contract, would there, to prevent the Waterman Steamship Company from hiring some-
848 one else, other than the I. S. U. member, if the I. S. U. could not furnish the men?

A. We could still hire them.

Mr. JOHNSTONE. That is all.

Recross examination by Mr. HOSKINS:

Q. Mr. Ingram, at the time Mr. O'Connor was working, you were his superior, were you not?

A. Indirectly, yes; that is, under the direct management of the chief engineer.

Q. And the chief engineer reports to the port engineer?

A. Yes.

Q. And you are assistant port engineer?

A. Yes.

Q. So that is rather a straight line of indirection there, isn't it?

A. Yes.

Q. By the testimony you have just given on redirect, in answer to Mr. Johnstone's questions, you did not mean to qualify or to change in any way the answers you gave me to my questions on cross-examination; did you?

A. I tried to answer them both the same.

Mr. HOSKINS. That is all.

Trial Examiner SEAGLE. Are there any more questions?

(No response.)

850 Examination by TRIAL EXAMINER:

Q. Just how long, exactly, was the "Fairland" laid up?

A. Exactly the days, I don't know.

Q. I still have not ascertained that fact; I think——

Mr. MCCORVEY. We can get that from the record of the drydock ompany.

Trial Examiner SEAGLE. Do you expect to do that?

Mr. MCCORVEY. Yes.

Q. Anyway, you don't know exactly whether it was five, six, or even days?

A. No, sir.

Q. Who told you that two or three members of the "Fairland" rew had not joined the N. M. U.?

A. I was told by several people, to the best of my recollection.

Q. Well, who were they?

A. Well, the mate, for one, told me that a couple of them had not oined, and the chief engineer, for another one.

Q. When did they tell you that?

A. Sometime during the day after the ship came in.

Q. So the mate and the chief engineer must have known that during he voyage?

A. Well, the ship touched Tampa before she got here.

Q. How did these people come to tell you that? What were the circumstances?

851 A. Well, when I go aboard a ship, I always ask them how the crew was, when I get a chance to talk to them, and I look for repairs and ask them.

Q. Did you ask either the mate or the engineer how many of the crew had not joined?

A. No, sir.

Q. How did they come to tell you that?

A. Well, they said some of them—the rank and file men—some of them did not join.

Q. Well, you didn't ask them that?

A. No, sir; I just asked them about the crew.

Q. Why didn't you understand your question, then, to refer to union affiliation?

A. I did not exactly refer to their union affiliation.

Q. What did you understand it to mean?

A. What did I understand?

Q. Yes; what did you have in mind when you asked them the question as to how the crew was?

A. How are they getting along.

Q. In what sense did you mean; their health?

A. Are they good and sober men, reliable men, or other kind of men, and about their health, and so forth.

Q. What was the first thing they told you?

A. I can't recall that.

Q. Did they tell you anything about their sobriety and in-

851½ dustry or health?

A. To the best of my recollection they told me that one—that they stayed away in Tampa.

Q. Well, did they tell you that right away?

A. No, not right away; after I got through with my ship's business, I asked them all that stuff and they told me that, but not until after I got through with my ship's business, and then I asked them.

Q. Did that surprise you?

A. Yes, sir; very much so.

Q. Who were these three men?

A. I don't know.

Q. Who did not join the N. M. U.?

A. I don't know.

Q. You ever learn their names?

A. No, sir.

Q. When did you tell the master of the "Fairland" to lay off the crew?

A. As soon as I went on board; as soon as he got tied up.

Q. As soon as he got tied up?

A. Yes, sir.

Q. Was that before this conversation you had with him about the crew?

A. Yes.

Q. And what they had been up to?

852 A. Yes.

Trial Examiner SEAGLE. We will adjourn until 9:30 a. m. tomorrow.

(Whereupon, at 5:35 p. m., November 4, 1937, the hearing was adjourned to 9:30 a. m., November 5, 1937.)

858 Before the National Labor Relations Board, Fifteenth Region

Case No. XV-C-75

[Title omitted.]

FEDERAL BUILDING,
Mobile, Alabama, November 5, 1937.

The above-entitled matter came on for hearing, pursuant to adjournment, at 9:30 o'clock a. m.

Before WILLIAM SEAGLE, Trial Examiner.

Appearances

Joseph A. Hoskins and Berdon M. Bell, Attorneys on behalf of the National Labor Relations Board. Stevens, McCorvey, McLeod, Goode, Turner, Merchants Bank Building, Mobile, Alabama, by Gessner T. McCorvey, and C. A. L. Johnstone, Jr., on behalf of the Respondents. William L. Standard, 291 Broadway, New York City, by Max Lustig, of counsel, on behalf of the National Maritime Union of America. Alex Howard, 415 Van Antwerp Building, Mobile, Alabama, on behalf of the Seamen's Reorganization Committee of American Federation of Labor.

859 PROCEEDINGS

Trial Examiner SEAGLE. The hearing will come to order.

R. G. DOBBIN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. MCCORVEY:

Q. Mr. Dobbin, what is your business?

A. I am shipping commissioner.

Q. United States Shipping Commissioner?

A. Yes, sir.

Q. How long have you been engaged in maritime work, in shipping circles?

A. You mean as seaman and everything?

Q. Everything, how long have you been connected with seafaring matters?

A. Oh, I guess 25 years.

Q. And you have had a good deal of experience in various ways!

A. Yes.

Q. Just tell what experience you have had in seafaring and maritime matters?

A. Well, I have been a sailor, an unlicensed man, a licensed man, captain of a ship a little while, and then I have had this job here.

Q. How long have you been United States Shipping Commissioner?

860 A. About nine years.

Q. About nine years at the port of Mobile you have been United States Shipping Commissioner?

A. Yes.

Q. Captain, I will ask you, in shipping circles, what is the custom as to the employment of seamen, for what term are they employed, as a rule?

A. Well, they sign shipping articles—you mean merchant seamen!

Q. Yes. That is shipping articles required by statutes?

A. They are.

Q. And do the shipping articles show the term of employment?

A. It must be specified therein.

Q. Are you familiar with the shipping articles of the Steamship "Bienville" and the Steamship "Fairland" on the voyages made by those two vessels from which they returned to the home port of Mobile in the early part of July 1937?

A. I am; yes. I have been here.

Q. At our request, did you make up the shipping articles?

A. Yes, sir; I made a copy of them.

Q. In regard to these two vessels?

A. Yes, sir.

Q. And you made ver'ified copies of them?

A. Yes, sir.

861 Q. And you have them there with your original records!

A. Yes, sir.

Q. Now, Captain, when a crew ships out, do they sign up articles stating the term for which they are shipping?

A. Yes; it must be stated in the articles; it must be made clear to the men.

Q. And when they return, do you obtain from the members of the crew a release of the master and of the owners from all claims for wages with respect to the voyage and with respect to their return?

A. They must sign too.

Q. Is that signed on the same paper?

A. That is right; yes, sir.

Q. In other words, they sign up the articles in one column, and when they are discharged at the end of the voyage they sign in another column?

A. Yes.

Q. Captain, what is the custom in shipping circles about the termination of employment of a seaman? Is their term of employment terminated or not at the end of the voyage, where they sign up for one voyage?

A. It has to be terminated according to the articles of agreement that they sign, and if it specified that Mobile will be the final port of discharge, and if they sign for one voyage, of course, the
862 articles must be closed out along those lines.

Q. And is it customary and generally understood in maritime circles that when a seaman signs for one voyage that he, when the voyage is terminated, and he signs before the United States Shipping Commissioner, that his term of employment is ended?

A. Oh, his term is through; there ain't no question about that.

Q. Any further employment to go back on that vessel or any other vessel must be an entirely new undertaking?

A. He must sign a new agreement. There ain't no question about that.

Q. Captain, I will ask you to look at the certified copy of the shipping articles of the ship "Fairland," and I will ask you if that is a true and correct certified copy that you prepared and certified for us yesterday of the shipping articles and discharge of the seamen of the "Fairland"?

A. It is; yes.

Mr. McCorvey. I offer in evidence, as a respondent's exhibit, certified copy of the shipping articles identified by the United States Commissioner.

Mr. Hoskins. No objection.

Trial Examiner Seagle. The articles will be admitted in evidence as respondent's exhibit 22.

863 (Thereupon, the articles referred to were received in evidence and marked "Respondent's Exhibit 22.")

Q. Now, Captain, I will ask you to look at this paper which purports to be a certified copy of the shipping articles of the seamen and the discharge on the Steamship "Bienville," and ask you to state whether or not that is a true and correct copy of those shipping articles and release which you prepared at our request yesterday?

A. It is, yes, sir; it is a copy I signed.

Mr. McCorvey. I now offer in evidence, for the Respondent, a certified copy of the paper identified by the United States Shipping Commissioner, and request that it be admitted in evidence as Respondent's exhibit 23.

Trial Examiner Seagle. The shipping articles of the "Bienville" will be admitted in evidence as Respondent's exhibit No. 23. Counsel for the Board has no objection to the admission of the articles.

(Thereupon, the articles referred to were received in evidence and marked "Respondent's Exhibit 23.")

Q. Now, Captain, did each and every member of the crew of bot vessels on the voyage referred to in the articles which you have ju introduced, sign the releases and discharges thereon, in your presence

A. They signed the release of the articles, but whether the
864 signed the discharges or not, I don't know, because I have bee short of discharges for about six months.

Q. What do you mean by discharges?

A. Well, the Government brought in a new system. They abolishe this old form, see, and my office has been short of these for about si months. They ain't printing any more, and I have had a couple o instances where we just were not able to supply them at the time w paid off, but normally they get their discharge when they get paid off when we have a form.

Q. This release that you talked about was in this last column of thes shipping articles?

A. That is not in there.

Q. They sign them in your presence?

A. Yes; but whether or not each one got one of these I don't know because I have been short of forms for six months.

Q. That is what is given to the seaman?

A. Yes.

Q. But they sign and release the articles in your presence?

A. Yes; the signature is here.

Q. Did any members of these crews present any further claim against either of these ships?

A. No, sir.

Q. Did any members of these crews make any representation o statement, ever, in your presence, that they had any prior right to g out with these ships when they again sailed?

865 A. No.

Q. Do you know of any prior right, in shipping circles, tha those members who signed this release would have, Captain?

A. I don't know of any right they would have; no, sir.

Q. I believe Captain Reed is port captain of the Waterman Steam ship Corporation?

A. I believe he is too; yes, sir.

Q. He arranged with you to pay off the crew of the "Fairland" o Monday, didn't he?

A. He usually calls me the day or so before.

Q. He arranges for you to come down there?

A. Yes.

Mr. McCorvey. I believe that that is all I want to ask Captai Dobbin.

Trial Examiner Seagle. Very well. Do you wish to cros examine?

Mr. Hoskins. Yes, please.

Cross-examination by Mr. Hoskins:

Q. Captain Dobbin, how long has this form been in use?

A. Only a short time.

Q. About how long?

A. Well, roughly about ten months I would say.

Q. And there were shipping articles used before that?

866 A. Yes.

Q. How long have shipping articles, as such, been used?

A. Oh, I think they have been in use all the time.

Q. Well, what do you mean "all the time"?

A. Ever since we established the first merchant marine Act in the second administration of George Washington, in 1783.

Q. What is the extent and the purpose of shipping articles? Isn't it for the protection of the seamen?

A. Well, not only for the seamen, but for the owners and masters as well.

Q. Just glancing hastily at this, I notice it provides for the amount of food that must be carried, and the substitutions that can take place in the line of food, and it contains some sort of an agreement for diligent and industrious work, and various other provisions that relate to the employment of the seaman himself, and the conditions of work aboard, and speaking from a quick observation of certain paragraphs, they would seem to go to the safety of the sea conditions. Is that about your understanding of the articles? Have I covered it generally?

A. Yes; I would say so. Of course, the whole principle of the articles are here for all of us to read. You have the same articles I have. We cannot very well add or take anything away from it. That is what I mean.

Q. Now, when you spoke of the men signing, or when it has

867 been spoken of the men signing releases and discharges, the only place he signed, taking respondent's exhibit 22, the articles for the "Fairland," as an example, is in the last column of what would be page 3, although it is unnumbered, isn't that right?

A. Page one, isn't it?

Q. No; it would be page 3, the way I count it, the right hand page, the first one inside of the cover leaf?

A. Yes; the release is here.

Q. Right underneath the word "release"?

A. Yes.

Q. And this statement is: "We, the undersigned seamen do hereby, each one for himself by our signatures herewith given in consideration of settlements made before the Shipping Commissioner, release the Master and owners from all claims for wages in respect of this voyage or engagement and I, the Master, do also release each of the undersigned seamen from all claims, in consideration of this release signed by them."

A. That is correct, yes, sir.

Q. That is what they sign?

A. That is what they sign.

Q. That is a release of claim for wages on this voyage, isn't it?

A. That is right.

Q. Just as the language there states?

868 A. That is right.

Q. And when questions have been put or answers have been stated about releases and discharges from terms of employment, and everything else, it simply comes back to this statement here?

A. That is a mutual release.

Q. That is what they sign?

A. Yes, that is the only one place to sign.

Q. That is where they sign a release for wages?

A. Well, yes; and, of course, the company's liability for wages.

Q. But that is what they sign?

A. It is signed here to go out and here to close out (indicating on respondent's exhibit 22).

Q. When you say, "to go out," and "here to close out," you are referring to the extreme left hand column and the extreme right hand column on the inside sheet?

A. Yes, sir.

Q. In your testimony you spoke of the fact that signing this release terminates the employment or that it completes the employment, or words to that substantial effect. You mean insofar as the voyage covered by the articles is concerned?

A. Yes.

Q. You don't mean to interpret any employer or employee

869 liability that might exist between the company and these seamen, do you, as distinguished from the articles for the voyage?

A. I did not go into that.

Q. I assume your answers are limited purely to the article and the statute which regulates the article?

A. Yes, whether they sign for one voyage or a period engagement.

Q. When you spoke of the effect of customs and prior rights, did you not mean only insofar as the articles are concerned and the statutes regulating the articles are concerned?

A. And periods of engagement.

Q. As specified in the articles?

A. Yes.

Q. But you did not mean to interpret any employer or employee relationship as distinguished from the actual, written provisions of the articles, did you?

A. I don't know that I clearly understand what you are trying to ask me.

Q. When you spoke of customs and prior rights or preference rights, when you stated that there were no such things in your direct testimony——

A. I stated what?

Q. When you stated in your direct testimony that you knew of no prior rights to be given any of these men to sail again,

870 you remember that statement?

A. Yes.

Q. You meant only insofar as the flection of the articles is concerned?

A. Yes, sir.

Q. You did not mean to disturb any custom not covered by statute or covered by the articles; a custom among seafaring men, did you?

A. I did not get that.

Mr. McCorvey. I don't think the witness can disturb a custom. I don't think you meant to say that, did you?

Mr. Hoskins. I made it very plain. I am sorry you don't understand it. There was no doubt in your mind as to what I meant, was there?

Mr. McCorvey. Yes, very serious doubt.

Trial Examiner Seagle. That is true, that the Captain cannot disturb any custom.

The Witness. I don't think I have anything to do with the custom.

Q. Let me restate the question, Captain. In making your answers on direct to questions put to you relative to prior rights of the seamen, when signing off articles, were your answers limited to articles as such, and to statutes regulating articles?

A. I would say it was limited to the shipping articles.

871 Q. You were speaking then only with reference to shipping articles, is that correct?

A. Well, I would say that. Of course, under certain circumstances we might be able to bring in a different answer, more specifically.

Q. Let me ask you the question, then, directly. Do you know whether or not there is a custom among the shipping companies and among the seamen to the effect that if a member of the crew has given satisfactory performance on a voyage he is preferred by all parties concerned to sail again? Do you know whether that custom exists or not?

A. Oh, in many cases the seamen making the voyage sign on again and in many cases they do not. I would say you cannot bring in a yes or no, depending on the situation.

Q. Now, I ask you; isn't it true that in a great many cases some seamen go off a boat and sign on for the next voyage?

A. We have many cases. They do in many cases, and they do not in many cases.

Q. And if they do not, do you know why they do not?

A. Not necessarily.

Q. Isn't it true that if they do not it is because they voluntarily resigned and decided not to sail again, or else that they have been charged for inefficiency or incompetency?

A. They leave vessels for many reasons. There are many reasons for leaving a boat.

872 Q. You do know, as Shipping Commissioner, there have been many cases, and many occasions, where men have come off a boat, signed up these articles, and immediately signed up for the next voyage?

A. Oh, I have seen that many times.

Q. How many times?

A. Oh, I don't know offhand; we sign up many ships a year.

Q. How many ships do you cover in a year, about?

A. Oh, I would think two or three hundred.

Q. Can you think of any one case where the boat sailed again, where it got ready for the next voyage right away, where there were not at least some of the crew signed up again?

A. Say that question again.

Q. You stated in the last year you probably witnessed the signing on and off——

A. (Interrupting.) No; the last question you asked me about the signing off.

Q. I am trying to rephrase it to make it a little clearer—two or three hundred vessels?

A. Yes.

Q. Now, I ask you, limiting your answer, and I am limiting my question to those cases where the boat is made ready to ship again, rather than being laid off, can you think of any one case where, when you signed off, and signed articles on for the next voyage, there
873 were not at least some members of the crew who signed off and immediately signed on again?

A. Offhand I don't think I can remember a case like that.

Q. You cannot remember a single case like that?

A. Not offhand, but I think it has happened.

Q. By far and wide, is it not true, in every voyage like that, that the men sign off and some of them sign on?

A. Normally some of them sign back.

Q. Normally some of them sign back?

A. Yes, sir.

Q. And you covered about two to three hundred vessels a year, is that right?

A. That is right.

Q. That signing off and signing back on has been going on for a period of years, hasn't it?

A. Yes, sir.

Q. And you have been here nine years, and it has been done during the nine years you have been shipping commissioner?

A. Yes, sir.

Q. And before that you were a captain, a licensed officer, and quite a while back a seaman, is that correct?

A. Yes, sir.

Q. And, as such, that custom still existed back then, didn't it?

A. Now, you understand there has been cases where the whole crew has been discharged or fired and none of them came back.

874 Q. I understand, but I am speaking of the general custom.

A. But I think when a ship comes in and stays here a day or two, some of them sign up again.

Trial Examiner SEAGLE. There cannot be any question that crews or vessels reship constantly. I don't think anybody doubts that fact. The question here is whether the employment continues.

Mr. HOSKINS. Mr. Examiner, the witness on direct examination was asked the question point blank as to whether that has terminated the employment.

Trial Examiner SEAGLE. I understand that, but I do not see how any reasonable human being can doubt that the members of crews often go out on another voyage. I don't think anybody here doubts that.

Mr. MCCORVEY. No more than a lawyer occupying an office generally re-signs his lease for another year.

The WITNESS. We discharge men and will reship men. That is all there is to it. There ain't no question about that.

Trial Examiner SEAGLE. The question, as I see it, is whether seamen regard themselves as continually employed by the same steamship company, irrespective of the articles, but there isn't any doubt that they reship constantly on ships.

Q. Captain, I believe you stated you have been out of a supply of discharge slips for some time. Isn't it a fact that the crew
875 of the "Fairland," at the termination of the particular voyage as shown in respondent's exhibit 22, that the crew received no discharge slips?

A. They did not receive discharges?

Q. At the time they signed off?

A. Well, as I said, I don't recall whether they did or not, but if we did not supply them, of course, they were told they could come to my office and I could give them an office record of their service, for which we do have some forms. We did not in any way intend to beat them out of their service on the boat.

Q. Oh, I understand that. I just asked the facts.

A. This form became void about a year ago, and before this became effective, there was a period when our office was out of these forms.

Trial Examiner SEAGLE. Do you remember the month of the year when you were out of forms?

The WITNESS. We were out of them from January up until about the middle of July. And, I wrote about two letters about them.

Trial Examiner SEAGLE. In that case, then, the members of these crews signed these discharge slips, because they left the vessel July 5th or 6th?

The WITNESS. Well, we usually have these slips, these discharge slips made out.

876 Trial Examiner SEAGLE. Will you answer my question, then? You say you did not have any discharge slips until the middle of July. Now, I am calling your attention to the fact that the members of the crew of the "Bienville" and the "Fairland" left their vessels either July 5th or July 6th. Now, in view of that information,

The WITNESS. I say I do not recall whether they got them or not on those two vessels.

Trial Examiner SEAGLE. But you do state positively that you did not have discharge slips until the middle of July.

The WITNESS. No; I said I was short during that period. On some vessels we were able to supply and some we were not.

Trial Examiner SEAGLE. I did not so understand, I thought you said you were out of charge slips.

The WITNESS. On some we were able to supply them.

Q. Captain, just to clear up any doubt in my mind before releasing you from cross-examination. Am I correct, that your answers given on direct examination were spoken with reference to those articles only?

A. Well, I was questioned about the articles on the "Fairland" and the "Bienville."

Q. And your answers were——

A. (Interrupting.) Pertaining to those two ships and those two sets of articles for those two vessels, yes.

Mr. HOSKINS. That is all.

877 Trial Examiner SEAGLE. Do you have any questions, Mr. Howard?

Mr. HOWARD. I would like to ask him some questions; yes, sir.

By Mr. HOWARD:

Q. Captain Dobbin, how long did you follow the sea as Master mariner before you became shipping commissioner?

Mr. LUSTIG. We have had testimony on that, Mr. Trial Examiner.

A. About seven years.

Q. And how long have you been shipping commissioner?

A. About nine years.

Q. Under the law, is it part of your duty to protect and to help or advise seamen who come into port, and who have disputes or difference with their owners and ships?

A. Yes, sir. Section RS–4554 takes care of that. Of course, you are familiar with that.

Q. Now, as such shipping commissioner during the years that you have served at the port of Mobile, insofar as you can remember, has any seaman ever come to you claiming that after he had signed off the articles on the ship, on one voyage, and was then discharged, that he had some further or additional right to reship with the same company or the same vessel?

A. No, sir.

878 Q. Did any member of the crew of the "Bienville" or any member of the crew of the "Fairland" after being paid off or discharged at Mobile, ever come to you and complain that the ship had laid up, and for any cause, that he had been denied any further employment on board the ship?

Mr. HOSKINS. I object to that question.

Trial Examiner SEAGLE. I do not see that it is material or relevant. The objection is sustained.

Mr. HOWARD. We except.

Q. I will ask you, being the Shipping Commissioner in the port here, charged with the duty of protecting the rights of seamen, have you issued any orders to the Masters or owners of either the "Bienville" or the "Fairland," directing them to reemploy any members of the crew that had been discharged and paid off at the termination of the voyage at the port of Mobile?

Mr. HOSKINS. I object to that question.

Trial Examiner SEAGLE. Do you have power to order anyone to be reemployed, to order anyone to reemploy men after the termination of articles?

The WITNESS. I have no authority.

Trial Examiner SEAGLE. Does any United States Commissioner have such authority?

The WITNESS. You mean shipping commissioner?

Trial Examiner SEAGLE. Yes.

The WITNESS. No, sir; I have no authority to tell anybody
879 who to hire.

Trial Examiner SEAGLE. Objection sustained.

Q. In connection with your duties as shipping commissioner, may I ask you what has been your experience after a seaman has signed articles for a foreign voyage, if he is paid off or discharged at some other port, before you come to the final port of discharge, isn't it a custom that he shall be sent back to the port where he shipped at the expense of the owner?

Mr. HOSKINS. I object to the question. I think the intervener is going beyond the scope of his intervention.

Trial Examiner SEAGLE. I confess I do not see the purpose of that question. There is no such question involved in this case. Objection sustained.

Mr. HOWARD. Exception.

Redirect examination by Mr. MCCORVEY:

Q. Captain, the ship's articles, which you have identified, that is the entire contract between the seaman and the ship owner, is it not?

Mr. LUSTIG. I object to that.

Mr. HOSKINS. I object to that question. The Captain has no knowledge of that.

Q. Do you know whether or not there is any other contract entered into between the seaman and the ship owner, other than the
880 contract as shown by the shipping articles containing provisions that the crew shall conduct themselves orderly, soberly, and faithfully, and the other classifications in there; is that the only contract that you know of which is entered into between the members of the crew and the owners of the ship?

A. That is the only contract. It is the outstanding contract. It is the one that must be made up and signed.

Q. Captain, whenever the members of the crew come in and feel that they want to go out on another voyage on that same vessel, don't they have to enter into a new contract?

A. They must sign a new contract, yes.

Q. Now, Mr. Hoskins asked you about the custom and about the articles. As I understand it, the custom that you testified about was that there was no obligation on the part of the ship to reemploy the same men. It is optional with the ship whether they wish to employ the same men, isn't that correct?

A. These articles are signed between the Master and the seamen.

Q. I am talking about a new voyage.

A. When signing these articles, if the Master doesn't want anyone, he won't sign him on.

Q. After he comes off, and after he signs a release or discharge in the last column, then is there any custom that forces the Master or ship owner to reemploy that man for any voyage?

A. The fact that they made one voyage on a ship does not
881 give them any claim to make another one.

Q. It is optional with the ship owner whether they want to reemploy that man?

A. Yes.

Q. Captain, where a ship is tied up for repairs, or goes on drydock for some days, from six to seven days, or up to 27 days, in that case the crew gets more or less scattered around, very frequently?

A. Usually when a ship goes on drydock the crew gets away.

Q. Do you know of a custom, any custom by which a ship goes on drydock for 24 or 36 hours, and then ties up in the yard for the following six or seven days, do you know of any custom requiring the owner of that ship to go hunt up the same crew when she goes out again?

A. I think sometimes they do and sometimes they do not.

Q. Do you know of any custom requiring them to do that?

A. I don't know of any custom; no, sir.

Q. Mr. Hoskins asked you if what you said about the articles applied to the "Bienville" and the "Fairland." I will ask you if what you said about custom in maritime circles apply generally to these maritime matters, or was the custom which you related to just relating to these two ships?

A. I don't know as I quite understand your question.

Q. You stated something on direct examination about cer-
882 tain customs, stating you knew of no custom requiring the master of a ship to reemploy a member of the crew who had already been released from a former voyage. Does that apply generally to vessels?

A. I would say it generally applies; yes, sir.

Q. I mean the custom you referred to did not refer to just those two ships?

A. I said it was up to the master whether he wants to take them out or not. There is nothing requiring him to take them out.

Q. In other words, he has to enter into a new contract?
A. Yes.

Recross-Examination by Mr. Hoskins:

Q. Captain, in the first part of your answers given to Mr. McCorvey, you stated that these articles were the only contract?
A. It is the only contract between the master and the seaman, it is for the voyage or a period agreement.
Q. You did not mean to say that there is no other employer or employee relationship between the seaman and the steamship company, did you?
A. Well, merchant seamen are generally referred to as being employed through shipping circles—do you mean employed like people working on shore in a store, or anything like that?
883 Q. No; but did you ever hear of a company having rules and regulations not embodied in those articles?
A. No, sir.
Q. Is there any provision in there for pay for overtime?
A. In some articles it is and in some it is not.
Q. Is it in those?
A. If it is in those articles, of course, it is easy to see.
Q. Do you know whether it is or not?
A. No.
Q. Never mind; an investigation of the articles will show it. Is there any provision in there about permitting union representatives on board?
A. I don't think there is anything in the articles about that.
Q. The companies may set up such rules, may they not?
A. I presume so, if the delegate goes on board.
Q. You don't mean to say that the article precludes the company from putting down any other rules and regulations that they want to?
A. I meant that these articles pertain to the voyage or period of employment. I did not mean it pertains to everything else you can bring up.
Q. You don't mean it is the only contract existing between the employer and the employee, necessarily, do you?
884 A. Well, in regards to wages and working conditions, the company is obligated to pay and they must pay out according to the articles. In other words, if there is no overtime in the articles, when the ship gets back, I don't think the men can collect it.
Trial Examiner Seagle. Do you mean to say that they cannot collect it even if they had another agreement?
The Witness. They cannot collect it through the shipping office.
Trial Examiner Seagle. Suppose they were members of a union that had an agreement which called for the payment of overtime and there was no provision in the articles for the payment of overtime. Do you mean to say they could not collect it?
The Witness. They would have to collect it other than through the articles.

Trial Examiner SEAGLE. That is not the question. I asked you could they collect it anyway, in the ordinary case.

The WITNESS. I don't know whether they could or not. I think in many cases they have lost it.

Mr. LUSTIG. That is your private and personal opinion?

The WITNESS. I am satisfied as to that, in many cases they lost it, but in most cases where the company agrees to pay it, they pay it.

Trial Examiner SEAGLE. I really am getting impatient with this whole line of examination. I stated that several
885 times, but I am apparently unable to convince you gentlemen. There is a plain provision in the contract which applies to cases of reshipment, and in view of that fact, I don't see that it makes any difference whether there is a custom or is not.

Mr. HOSKINS. With the permission of the Trial Examiner, I would like to pursue this point a bit further.

Q. Speaking of the shipping articles being the only contract, you meant the only written contract insofar as you know, is that correct?

A. That is correct. In other words, I mean to make it clear that so far as merchant seamen are concerned, the ship's articles is the outstanding document, it is the only document, and the original document on board which contains the signature of the men, and from the shipping articles you make up other things, such as the crew lists and immigration papers. All of those other papers are made up from it. You cannot make them up without a set of ship's articles, and it is pretty hard for a merchant seaman to get away from the provisions of the ship's articles, or the Master or the owner.

Q. But you did not mean to state that there is no possibility of an agreement, written or oral agreement, between the same shipping company and the men, not covered by the articles?

A. Oh, if the Waterman Steamship Company, or anyone else wanted to promise somebody something, I would not have
886 anything to do with it. You could not possibly expect me to know about that.

Q. Then, your answers today were limited to the shipping articles?

Trial Examiner SEAGLE. It is quite obvious that the witness does not know what arrangements were made between the company and the seamen, apart from what takes place in his office.

The WITNESS. I have to go by my shipping articles, that is all.

Examination by Trial Examiner:

Q. Have you ever heard the term "prompt reshipment" before?

A. Why, I think I have; yes, sir.

Q. Where and when, or in what connection?

A. Well, sometimes you go down to pay off a boat, and after you pay off you may sign on again at the same time, you know, within the same couple of hours, and I think that that is referred to as prompt reshipment. We oftentimes do that.

Q. Would you say there was such an expression which is used to describe that situation; that is, used in shipping circles?

A. Well, if the paying off and signing on is done like that day, within a day or so, you would probably say it was prompt.

Q. I am not asking you whether you could say it is prompt, I am not interested in the grammatical expression of the word "prompt," I understand it. I am asking if this expression,
887 "prompt reshipment" has, or is a universal expression among shipping men?

A. We still use it.

Q. You have not answered my question. Is there a general understanding among shipping men as to what prompt reshipment means?

A. I think there is.

Q. What is that understanding?

A. Well, when the turning over is done within a short period of time.

Q. Short period of time?

A. Yes.

Q. Is there any general understanding as to how short that would be, does anybody know?

A. I think in the number of hours, as I specified.

Q. Is there any number of days specified?

A. Well, I think——

Q. I am not asking you what you think; I am asking you whether there is any general understanding as to what period would be regarded as prompt reshipment?

A. That is what I have said, I think a day or so covers it.

Q. You are giving me now your personal opinion, is that it?

A. Speaking for myself as Shipping Commissioner.

Q. You are not speaking for the shipping men generally?

A. I could not very well speak for them generally, but they
888 will have to speak for themselves.

Q. I mean there are certain expressions in maritime circles which have a definite meaning?

A. I say about a day takes care of it. Isn't that an answer?

Q. That is your answer, but do you go further than that?

A. I cannot answer for anybody else.

Q. Have you ever discussed that term with anybody?

A. I never did; I never had it put up before.

Q. As to what the term "prompt reshipment" means?

A. I think it is generally——

Q. Have you ever had any discussion about it?

A. No, sir; I have not discussed it.

Redirect examination by Mr. McCorvey:

Q. Captain, what did you say your understanding of prompt reshipment would be, under what sort of practice?

A. Well, I think if the turn-over is made within a day or so.

Q. What do you mean by "turn-over"?

A. Well, we sometimes go down and pay a crew, and sometimes w pay them off and sign them on, and sometimes we go down and onl sign them on.

Q. You sign them on——

A. After we pay them off, sometimes; yes. That is reship ment.

889 Q. And when you sign them on after you sign them off, yo sign them right on——

A. That would be known as prompt reshipment.

Q. If a man was paid off and his vessel was tied up in port any where from six to seven days, or twenty-six or seven days, would that, in your opinion, be known as prompt reshipment?

A. Well, where there are six days elapsed or seven days elapsed, it would not be so prompt. They would have to prorate it, day by day.

Q. I mean you would not refer to that as prompt reshipment?

A. No; I think after a day or so the word "prompt" can be taken off.

Q. As a matter of fact, it is not prompt reshipment?

A. No, sir.

Q. And doesn't prompt reshipment mean when the ship comes in, unloads, loads, and goes right out again?

A. Yes, sir.

Trial Examiner SEAGLE. Would it make any difference in your answer if the ship was laid up for repairs, would that alter your opinion as to what constitutes prompt reshipment?

The WITNESS. Well, when they lay up for repairs they normally lay up for a period of a few days.

Trial Examiner SEAGLE. Suppose they lay up for weeks?

The WITNESS. I would not call that prompt reshipment, al- though it is referred to as prompt reshipment when a vessel

890 lays up for a week.

Trial Examiner SEAGLE. That is all. The witness is ex- cused.

(Witness excused.)

HARRY FAGAN, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. McCORVEY:

Q. Your name is Harry Fagan?

A. Yes, sir.

Q. Mr. Fagan, what is your occupation at the present time?

A. Port steward, Waterman Steamship Company.

Q. How long have you held that position?

A. Ten years last September.

Q. Now, will you please explain to the Examiner there just what the duties of the port steward are?

A. Well, there is quite a number of them; it refers to feeding everybody on board ship, requisition for stores, see that everything is in shape, try to keep discipline in the steward department.

Q. Do you select stewards for the vessels?

A. Yes, sir.

Q. Now, were you in Court the other day when Mr. Pelletier was testifying?

A. Yes, sir.

891 Q. Did you hear his testimony about your discharge of him?

A. Yes, sir.

Q. Now, will you please tell the Examiner briefly, but covering the important items, all your conversation with Pelletier, and just what took place between you and Pelletier when the "Bienville" arrived in port?

A. Well, as a general rule——

Q. Not as a general rule, I say when the "Bienville" came in port?

A. Well, when the "Bienville" came in port, I went up to the office first and I picked up the mail. I always bring the mail to practically all the ships, and I brought the mail down there and gave it to one of the mates on the deck, and shook hands with him, and I cannot recall who it was now, which mate it was. Sometimes I give it to the radio operator—I shook hands with him and asked him how everything was in the steward's department, and as far as knowing anything he said, "Well, some of them joined the N. M. U.," and later on I found the steward in his room.

Q. Who was that?

A. Pelletier. I asked Pelletier did he join the N. M. U. and he said "yes," and I said, "What about the rest of your crew?" and he said, "Well, they all did." I asked him did they have any reason for it, and he said, "Yes, everybody did," so I said, "All right," and I left the ship.

892 I went back up to the office, I went in town and back up to the office again, and it must have been about two hours later when I come back down aboard the ship, and I believe Pelletier was in the lounge, so I called him in the room, because this was a private discussion with him; I called him in the room and I asked him did he remember before the "Bienville" sailed, about an hour before she sailed, when I called him out on the deck and asked him was everything all right and he said yes. This was about four o'clock in the afternoon, and I told him I had to go aboard another ship, and he said everything was all right to go ahead, and I said, "I may not be able to get back," and he said, "That is all right."

Mr. Hoskins. Is this a conversation before the boat sailed?

The Witness. This is before the ship sailed, and the next morning, Captain Reed informed me, just about the time the ship was ready to pull out, the steward asked for another mess boy, and I asked him if he knew that at the time the ship sailed, before the ship was ready to sail, and if he had any discipline in his department

he would know what was going on in his department; and he denied it, and I told him then, I said "Pelletier"—here is my words too—I said, "Pelletier, you are more trouble to me than all my stewards combined," and I said, "I am going to take you off," and later on I brought a man down there and got the keys from him.

893 That is all. I turned them over to the man, a man by the name of Black.

Q. Was Pelletier's services satisfactory?

A. When, during the "Bienville" time?

Q. Yes.

A. No, sir. Captain Reed got a letter from the Master of the ship, and one paragraph in it referred to the steward as being incompetent.

Q. That was referring to Pelletier?

A. Yes, sir; written from the other side, I believe.

Q. Did Pelletier's affiliation with the N. M. U. have anything in the world to do with his discharge?

A. Absolutely not. One competent man is as good as another.

Q. Did Pelletier seem to be able to handle his men in the steward's department properly, or not?

A. No; I think so, because he was chief cook on the "Bienville" the first trip, and the second trip, when the ship came back into Mobile, I did not have no stewards available, and I had trouble with Pelletier on the "Yaka," on account of his steward's department, they were quitting.

Q. Was Pelletier steward on the "Yaka"?

A. Yes, sir.

Q. That is Y-a-k-a, is it?

A. Yes; Y-a-k-a.

Q. Is that the trip before this?

894 A. No, this was a year before he went on the "Bienville."

Q. And you changed?

A. I had to change the mess boys and cooks on two or three different occasions.

Q. Is that on account of Pelletier's complaints?

A. Well, I don't know, he just could not hold his men for some reason or other.

Q. Pelletier could not?

A. No, men were quitting, calling up from another port, and things like that, and we had to send men over there to replace the men who were quitting.

Q. Is that unusual on your ships?

A. Yes, sir.

Q. As a rule, the steward gets along with his employees?

A. Yes, sir.

Q. Do you remember any other occasions that happened in the last year where you had to send cooks and mess boys to another place, because they quit a steward?

A. Oh, very rarely.

Q. And after that did you decide to give Pelletier another chance?
A. Yes, sir.
Q. And that was on the "Bienville"?
A. Yes, sir.

Q. And this letter, which you say Captain Reed has, and I will get it from him, that was written by the Master?
A. Yes, sir.

Q. From abroad, that he was having trouble, about the trouble he was having?
A. Yes, sir.
Q. When you went aboard the "Bienville," Mr. Fagan, did you tell Pelletier, when he told you that the members of the crew had changed to the N. M. U., that you were going to fire all of the crew in the steward's department?
A. I never fired a cook or a mess boy since I have been a port steward.
Q. Who does the firing?
A. The steward. I never tell the steward who to fire or who to hire.
Q. He runs the department?
A. He runs the department, and if there is any come-back he can be on his own feet.
Q. What, if anything, do you know about plans having been made in advance of the arrival of the "Bienville" for its tie-up for repairs?
A. The only thing I heard was from Captain Nicolson.
Q. Ordinarily the repairs on a vessel would not come under your department?
A. No.

Q. Tell us the circumstances under which you knew, before the "Bienville" came in, that she was going to be tied up for extensive repairs?
A. Captain Nicolson called me into his office one day, probably two or three weeks before the "Bienville" came into Mobile.
Q. At that time had she reached Tampa?
A. No, sir.
Q. Tampa is how far from Mobile?
A. About 36 hours.
Q. Captain Nicolson called you into the office and did what?
A. He told me the "Bienville" is coming in to lay up for a period of about 30 days.
Q. Captain Nicolson told you that at that time?
A. Yes, and he said he was going to have to kill the boat and he could not have steam or anything like that, and he was going to lay off the whole crew, and the reason he asked me, the reason he brought me in there, was, that he was going to have a dinner on board or a luncheon on board for about 120 men, and he asked me was I capable of doing that without having steam.
Q. 120 men of what organization?

A. The Rotary Club.

Q. That is a civic club that meets every week?

A. Yes, sir.

Q. And he wanted to give them their weekly luncheon
897 aboard one of the vessels?

A. Yes, sir.

Q. What did you do about it?

A. The only thing, I told him the only thing he can do under the circumstances is to give them a cold buffet, and that includes cold meats and things like that.

Q. You told him the only thing you could do was to give them a cold buffet luncheon?

A. Yes, sir.

Q. And did you give it to them?

A. Yes, sir.

Q. On board the "Bienville" while repairs were going on?

A. Yes, sir.

Q. Mr. Fagan, during the time the "Bienville" tied up there for these 26 or 27 days, for repairs, was there any occasion to keep the crew on board?

A. No, sir.

Q. You had to put on another steward on board to act as watchman?

A. Yes.

Q. Who was he?

A. A man by the name of Black.

Q. And was he employed under your contract with the I. S. U.?

A. Yes, sir.

Q. He was a steward, and I suppose he had charge of all of
898 the cooking arrangements, and so on, on the "Bienville"?

A. Yes.

Q. Did this man that you put on there, did he act as a steward, this man Black?

A. No, sir.

Q. What did he act as?

A. Well, the only thing, he was on the "Kenowis," he was on the "Kenowis" for a long time, and he was not feeling good, he wrote me a letter from Tampa and told me he would probably have to be relieved for one trip——

Mr. Hoskins. Is this answer responsive?

Q. I just want to know about the man who replaced Pelletier.

A. Black was a steward; he was a qualified steward, but he was placed aboard the "Bienville" as a watchman, because we were not feeding.

Q. There was no food being cooked on the ship during the time of the repairs?

A. No, sir.

Q. And no crew was being maintained, was it?

A. No, sir.

Mr. McCorvey. I believe that is all I want to ask Mr. Fagan, Mr. Examiner.

Cross-examination by Mr. Hoskins:

899 Q. Mr. Fagan, you say that you went aboard the boat as soon as it docked, is that right?

A. When she came back.

Q. The "Bienville"?

A. Yes.

Q. And you met the mate?

A. One of the mates.

Q. And you asked if there had been a good trip, and if everything had been all right?

A. I generally make it a rule to do that.

Q. And did you this time?

A. Yes, sir.

Q. And he stated that some of the men had joined the N. M. U.?

A. I never asked him about them joining; I said, "How is the steward's department?" and he said, some of them, I believe, joined the N. M. U. That is all he told me.

Q. Did you ask anything else about the steward's department?

A. No, sir.

Q. And that satisfied you?

A. Well, just like you say, "How is the trip?"

Q. You were not interested in the supplies or the cooking or anything like that, and he answered you that some of the men joined the N. M. U., and that was a satisfactory answer to you?

A. As far as I was concerned; yes.

Trial Examiner Seagle. Is that the first thing he told you?

900 The Witness. Well, I just asked him, "How is the steward's department?"

Trial Examiner Seagle. And that was his answer?

The Witness. Yes.

Q. Then, you went down and saw steward Pelletier?

A. Yes.

Q. And you asked him if he had joined the N. M. U.?

A. Yes.

Q. And you asked him if his whole crew had joined?

A. Yes.

Q. And he said yes?

A. Yes.

Q. Did you say anything else to him?

A. I didn't say nothing to him.

Q. Didn't say a single word?

A. I may have passed a remark, but it did not make any difference.

Q. May you not have told him that you would have to fire him for that?

A. I couldn't.
Q. May you have told him that?
A. I don't think I did.
Q. Will you swear you did not?
A. I did not.

Q. You swear right now that you did not tell him that?

901 A. That I did not tell him that day, the first day. It was the second trip of the ship I told Mr. Pelletier he was finished.

Q. Are you sure you did not say it?
A. The first time?
Q. Yes.
A. I cannot recall it offhand; I may have said it was all right.
Q. You could not have said it?
A. I know I did not say he was fired because he changed his book.
Q. You don't remember what you did say?
A. No; not offhand. I couldn't say the exact words; it is too long ago.
Q. Then you went off on another boat?
A. Yes, sir.
Q. And you came back a couple of hours later?
A. Yes, sir.
Q. And you hunted out Pelletier?
A. Sir?
Q. You hunted out Pelletier?
A. Yes.
Q. And you called him into a private room?
A. Yes.

Q. And what did you say to him then?

902 A. I asked him about this case before the ship left Mobile, and then, before that he had some trouble with his crew that morning; the first morning he turned to.

Q. Is this all of the conversation?
A. Yes; I said I asked him if he had anything to do with asking for that mess boy the last minute before the ship sailed, and he said no.

Examination by TRIAL EXAMINER:

Q. I don't quite understand. Was Pelletier lacking a mess boy?
A. He was not lacking a mess boy. Everybody was signed on.
Q. I thought you said the trouble was he was short a mess boy?
A. No; he was not short a mess boy.
Q. What was the trouble.
A. Everybody was signed on with the understanding that that is the amount of men the ship would carry in the steward's department, but about five minutes to four, practically an hour before the ship sailed going across, they sent—this is not after she came back, but before she left Mobile to go across——
Q. You are talking now about the steward on the "Bienville"?
A. Yes.

Q. Before they came back from the voyage, or after——
A. I am referring to the same steward.
Q. I know you are referring to the same steward, but what period of time are you referring to?
A. Well, it took the ship two months on the trip; two months before she came back here.
Q. And was it when the ship departed?
A. Sir?
Q. Was it when the ship left Mobile?
A. Left Mobile to go across.
Q. To go across?
A. Yes, sir.
Q. Now tell us what happened then?
A. Well, I already stated about an hour before the ship sailed that——
Mr. Hoskins. Do you want the conversation before the ship sailed or after it got back?
Q. I now understand the conversation to relate to the time the ship sailed. Tell us what happened?
A. After the ship arrived back?
Q. No; when it sailed.
A. About five minutes to four, about an hour before she sailed, I went up and asked Pelletier was everything Okeh and in order, and he said yes; and I shook hands with him and said, "Goodbye," and told him to watch out for everything, like I always tell the stewards, and I came ashore and went over to another boat, which was in port, and in the meantime, I told him that I might not be back.
Q. You mean Pelletier?
A. Pelletier; I told him I would not be back probably before five o'clock, when the ship sailed, and the next morning I went around to the docks, and Captain Reed met me and told me just about the time the ship was ready to pull out to sail foreign, Pelletier asked for an extra mess boy.
Q. By that do you mean that he had the full complement of mess boys?
A. In our consideration he did.
Q. And he wanted one more?
A. He wanted one more, in order to sail the ship——
Q. And did he get the extra mess boy before he sailed?
A. He had to get on at Tampa. I know he got him.
Q. He got him?
A. Yes.

By Mr. Hoskins:

Q. Now, coming back to your conversation in the private room, just off the lounge, at the end of the trip, after you asked him if he joined the N. M. U., and you took a couple of hours off to go to the

office, then came back and hunted him out, and took him in the private room, now, what was the conversation that went on there?

A. I asked him, did he have anything to do with asking for that extra mess boy just before the ship sailed from Mobile, on the
905 previous voyage, and he said, no, and he said, "I had nothing to do with it"; he said, "The rest of them asked for him."

Examination by TRIAL EXAMINER:

Q. Who were the rest of them?

A. I don't know, he may have meant the sailors, or it may have been among them, or probably the mess boys themselves, but he said he had nothing to do with it, and I said, "I doubt you seriously," and I said, "Pelletier, I am going to take you off."

Q. What made you doubt it seriously?

A. Because I had trouble with him on the "Yaka."

Q. But you did not know the situation with respect to the "Bienville," did you; at that time?

A. I had heard about it, but I did not know it; no, sir.

Q. You did not know as to whether he was justified in asking for another mess boy?

A. All I know is, he had some trouble the first morning he turned to with the mess boys.

Q. That was on the trip on the "Yaka"?

A. He had trouble there with the steward's department.

Q. When was it?

A. Well, about a year ago.

Q. And what was it?

A. Well, general discussion, they were not satisfied with the steward.

906 Q. You mean the men were leaving the ship all the time?

A. Yes, sir; leaving all the time and being replaced.

By Mr. HOSKINS:

Q. Coming back to this conversation, what else did you say to him?

A. Sir?

Q. What else did you say to him in that conversation?

A. What else did I say to him?

Q. Yes; did you tell the whole conversation?

A. Practically all, and then I left.

Q. Well, tell the rest of it.

A. I just told him he was finished, and I would send a relief down, and walked out of the room.

Q. And you walked out?

A. Yes, sir.

Q. Did you bring in another man that day?

A. I came down that afternoon.

Q. And what did you say to him then?

A. I didn't say nothing to him, no more than necessary.

Q. You didn't say anything to him?
A. No, sir; I asked him for his keys.
Q. And then you did say something to him?
A. Yes; I did.
Q. What was the rest of that conversation?
A. I don't remember every word that was said.
Q. You don't remember every word?
07 A. No; I could not remember every word that was going on.
Q. But you have given a rather graphic description of that one onversation, and I thought you would know all after that. Do you emember anything you said?
A. I said what I told him the second time and the third time.
Q. You asked him for the keys?
A. No; in fact, he knew he was getting off when I went down there revious, on the second trip I made there, and he knew he was etting off.

Examination by TRIAL EXAMINER:

Q. What is the second trip, is that the conversation you had with im in the room?
A. Yes; when I told him I was going to take him off and give im a relief.
Q. Give him a relief; what does that mean?
A. Well, have a man take the ship over, and take care of it.
Q. In other words, fire him?
A. Yes.
Q. And that is the second time you saw him?
A. Yes, sir.
Q. And that was the private conversation you had with him?
A. Yes, sir; out in the room.

By Mr. HOSKINS:

Q. Now, this third time you saw him, you don't remember much of the conversation?
08 A. I don't think there was much going on, because this other fellow was on the boat and I told him to finish up the job and o take it easy, and at that time I told him to stay around there, and f necessary, to just hold the keys.
Q. You put a sick man in place of Pelletier?
A. Well, he was capable of moving around; he just had to stay here and watch the linen, and things like that.
Q. Is that the only thing the steward has to do?
A. After you kill the ship; yes.
Q. Was the ship killed at that time?
A. I don't remember whether it was or not.
Q. Was it killed that day?
A. I did not go down there; I did not go down to the engine room hat time, and I could not tell you if I did look down.

Q. That was up to the repair yards, was it?
A. No; that was up at Pier C.
Q. Then, it could not have been killed?
A. It may have been.
Q. It may have been; could it have been?
A. No, sir.
Trial Examiner SEAGLE. When you close down the ship, what work does the steward have to do around there?
The WITNESS. Watchman.
Q. But somebody has to close down the ship?
A. It was not necessary to close down the steward's depart-
909 ment, but just to put everything in safety lockers around there.
Q. And you just—you do not leave the silver and things like that, linen, lying around, do you?
A. Everything like that is taken care of a few days before. You send your linen ashore; all the soiled linen.
Q. You had some kick about overtime on that trip, didn't you?
A. With the crew?
Q. No.
A. With Pelletier?
Q. With Pelletier and the steward's department?
A. No; not with the Steward's department.
Q. You did not raise the complaint against the overtime slips that went into his department?
A. I said it was exaggerated; that is what I said.
Q. You did have a kick then, didn't you?
A. No, sir.
Q. You were not kicking about it?
A. I went up and talked to the Captain, to see if he had the sheets.
Q. And you told him you were going to fire the men?
A. I did not; absolutely not. I never fired the men.
Q. Who fired the stewards?
A. I fired the stewards, but not the men.
910 Q. You have charge of the stewards?
A. Yes, sir.
Q. But the stewards hire and fire the men?
A. Yes.
Q. And you were in charge of the men at the time you fired the messman and the mess boys?
A. That's right.

Examination by TRIAL EXAMINER:

Q. How much overtime was there?
A. Oh, I couldn't tell you.
Q. Was it a lot?
A. Sir?
Q. Well, approximately how much was it?
A. I don't know, about two or three hundred dollars, I believe.

Q. What does that mean in terms of hours?
A. 450 hours, approximately.
Q. And how long did the trip last?
A. Approximately two months, I couldn't tell you.
Q. Therefore, the 450 hours overtime was on a trip of two months?
A. Yes, sir.

By Mr. Hoskins:

Q. You mean man hours, don't you?
A. Yes, sir.
Q. How many men worked in the steward's department?
911 A. On that ship?
Q. Yes.
A. Eight.
Q. Now, your big complaint, then, against Pelletier on the "Bienville" was the fact that he asked for another mess boy, is that right?
A. No, I had trouble with Pelletier the first morning I put him steward on the "Bienville."
Q. Was that the second or the first voyage on the "Bienville"?
A. The first voyage he was cook; chief cook.
Q. My question is did you have this trouble on the second or the first voyage?
A. The second voyage, as far as Pelletier was concerned; no, sir. He made two trips.
Q. What was the trouble you had with him that morning?
A. I don't know, I went down there pretty early in the morning and I noticed some of the mess boys had not turned to, and I asked Pelletier what it was and he said he didn't know.
Q. And that was the trouble you had with him?
A. Yes, sir.
Q. Pelletier was the chief cook on the first voyage, wasn't he?
A. Yes, sir.
Q. And he was steward on the second voyage?
A. Yes, sir.
912 Q. And that is promotion, isn't it?
A. Yes, sir.
Q. There is an increase in pay, isn't there?
A. Yes, sir.
Q. About $25 or $30 difference in pay, isn't there?
A. About that.
Q. Now, the "Yaka," he had been on the "Yaka" how long; was that about a year before that you had this trouble with him on the "Yaka"?
A. About one trip, only one.
Q. And what was all that trouble, again?
A. Crew trouble.
Q. What crew trouble?
A. He did not have any discipline in his department.

Q. What do you mean he did not have any discipline; tell me wherein he did not have any discipline?

A. He did not know how to run the men.

Q. How didn't he, what did he do wrong?

A. I don't know, his attitude toward the men, sometimes.

Q. His attitude toward the men?

A. Yes, sir.

Q. What was his attitude?

A. Well, it may have been overbearing, for all I know.

Q. What do you mean by being overbearing?

A. Well, just working the men when it was not necessary,
913 and making the crew do a lot of things they didn't want to do, and it may have been the way he answered the men.

Q. Do you mean he asked the men to do something they wouldn't do?

A. No; it may have been the way he asked them.

Q. You said he was not able to handle men?

A. Yes, sir.

Q. And yet you gave him a promotion?

A. If you want to know why I did it, because I want to give a man a second chance to find out if he could succeed.

Q. And wouldn't you say this was his third chance?

A. No; his second.

Q. He had had trouble on the "Yaka"?

A. Yes, sir.

Q. And then you employed him on the "Bienville"?

A. Yes, as chief cook. He came through the Hall. I did not hire him.

Trial Examiner SEAGLE. What was he on the "Yaka"?

The WITNESS. Chief steward. The first trip on the "Bienville" he was chief cook ordered through the Hall, and then I needed another chief steward.

Q. And then you gave him a promotion?

A. I gave him the promotion.

Q. Now, the "Bienville" is a much bigger ship that the "Yaka," isn't it?

914 A. I don't know if it is much bigger in tonnage or not.

Q. I mean insofar as the steward's department is concerned?

A. Yes, sir; it has more men in the steward's department.

Q. And more work to do?

A. Yes.

Q. It is a bigger job all around?

A. Yes.

Q. You say Captain Nicolson was the first one in the company who gave you information that the "Bienville" was going to be laid up?

A. Yes, sir.

Q. When was that?

A. I don't know, about two or three weeks before the ship arrived.

Q. Two or three weeks before?
A. Yes, sir.
Q. Could it have been a month?
A. No; I don't think so; two or three weeks.
Q. Two or three?
A. Two or three, but I don't know exactly.
Q. You are sure it was not a month?
A. I am.
Q. You are positive it was not a week?
A. I am positive.
Q. You would fix the date therefore, as between 14 and 21
015 days before the ship arrived?
A. Yes, sir.
Q. It was before the ship arrived?
A. In Mobile?
Q. Yes.
A. It was.
Q. And when did it arrive at Mobile?
A. It was the period of the 5th or 6th of July; the 4th, 5th, or 6th.
Q. The 4th, 5th, or 6th of July?
A. Yes; I don't know. I didn't pay much attention to it.
Q. You are the port steward?
A. Yes; but my duty is to see that they feed and place the stores aboard the ship, and I do not place the stores aboard the ship until the ship arrives.
Q. And you are in charge of the supplies department?
A. Yes, the supplies.
Q. And this was between two and three weeks before the ship arrived?
A. Yes.
Q. That you were told?
A. Yes, sir.
Q. Now, what all did Captain Nicolson tell you?
A. He told me the ship was coming in to lay up, and she would be laid up approximately a month.
016 Q. He stated that she would be laid up a month?
A. He said approximately; yes sir.
Q. He said approximately a month?
A. Yes.
Q. You are sure of that?
A. Yes, sir.
Q. Go ahead.
A. And he told me there may be a possibility of having a luncheon on board for the Rotary Club, and he said, "If everything is killed could you handle it"? And I told him, yes; I told him it would have to be a cold buffet, because we could not cook without steam, or we could not make coffee anyway, and he said "All right, it would be just as well that way, because it would give them something

different than they had been having on their regular weekly luncheons."

Q. Did you subsequently give that luncheon?

A. Yes.

Q. And about when was that?

A. I could not go into the dates, it may have been a week after the ship was laid up.

Q. And it may have been later?

A. No, it would not be any later than about the middle of July, the 17th or the 18th, but I am not sure.

Q. Somewhere around then?

A. Yes.

917 Q. And where did you get the cooks and waiters and all to serve that luncheon?

A. Picked them up.

Q. I didn't understand that?

A. I didn't have anything to do with that job, it was a private party, and I was told to buy everything that was necessary and to get the necessary help, and I found two cooks and I told them to go aboard the ship and to handle everything. All they had to do was to cut and serve. Then, another steward I had met in town, who had been on a previous trip, I asked him to pick up any men he wanted to, and he went out there and picked up various ones; he picked up some in front of the Merchants Bank, and I told him how many were to be served and what I wanted.

Q. And you were not sure they were I. S. U. men?

A. No; it was not necessary to have I. S. U. men.

Q. Why?

A. Because it did not have anything to do with the ship; it was a private party.

Q. And have you read the contract?

A. Yes.

Q. That is your interpretation of it?

A. This was a private party, and the men that were serving were not members of the crew.

Q. It is your interpretation of the contract, then, that you
918 do not have to hire I. S. U. men?

A. No, sir; I don't think I could have gotten men to probably work for a day. It was a hard proposition as it was.

Q. Now, this fellow Black, he remained on board the boat until the boat sailed, didn't he?

A. No, sir.

Q. How long did he remain on board?

A. I tried to get him, to talk him into making the trip, and he said no, he wanted to go back to the "Kenowis," so I got another steward to take it out.

Q. How long did he remain on board?

A. Three weeks, probably.

Q. Practically the full time the boat was laid up?
A. Yes.
Q. And then you got another steward?
A. Yes.
Q. While Black was on board he finished up the work that Pelletier did not finish, is that right?
A. Finished up what work?
Q. Well, putting the linens and dishes away, and all that which is generally done?
A. Yes.
Q. Is that right?
A. Yes.
Q. Does that work require any messmen?
919 A. Not necessarily.
Q. Do you know whether any were there at the time he did that work?
A. I don't know if we hired any.
Q. And if there were any hired, they were hired through the I. S. U. hall?
A. Yes, sir.
Q. And you don't know whether any I. S. U. men came on board to help Mr. Black?
A. Not that I know of.
Q. Did you have any conversation with Pelletier after the instance you just told us about?
A. Yes.
Q. When?
A. A couple of times in the office.
Q. And you heard him testify about those conversations the other day, didn't you?
A. Yes.
Q. You don't deny them do you?
A. No sir.
Mr. HOSKINS. I believe that is all.

Redirect examination by Mr. MCCORVEY:

Q. Mr. Fagan, in answer to one of Mr. Hoskin's questions, I might have misunderstood you, but I understood you to say that so
920 long as this vessel was tied up there in Pier C, where it was being repaired, it was impossible to kill the steam. Did you say that?
A. No; I didn't say it was impossible to kill the steam.
Q. He asked you if, as long as she was tied up there, was it possible to kill the steam and you said no, it would not be done. I may have misunderstood you. Something was asked by Mr. Hoskins about what you said to the mate about stores or supplies. As a matter of fact, has the mate got anything to do with the stores and the supplies?
A. Not in the steward department; no, sir

Q. It is a matter that you would not discuss with the mate anyway, is that right?

A. I did not discuss it with the mate.

Q. Mr. Hoskins asked you about Pelletier's conversation with you at the office, and asked you if Pelletier's statement of what took place there was substantially correct, and I believe you said it was?

A. Yes.

Q. That was the conversation where you told him you could not hire him unless he was an I. S. U. man?

A. Yes.

Q. Now, is it your business to see that this steward department is properly manned, to see that there is the proper number of men in the steward department before the ships leave?

A. Yes.

921 Q. And you sort of kept in touch with Mr. Pelletier, and right down to the last minute he called and said he needed another man is that right?

A. That is what I was told. I was not there when he asked for another man, an hour beforehand.

Q. It was the next day, after the ship had gone to sea, you found out that he complained to your superior officers about letting the ship go out without having a mess boy on her?

A. Yes.

Q. He did not make the complaint to you about the mess boy, but he made it to Captain Reed, the port captain?

A. Yes, sir.

Q. And it was after the ship left when you complained that he did not perform his duties, is that right?

A. Yes, sir.

Q. You considered the failure of Pelletier to get the necessary mess boys before he left, as some evidence of his incompetency?

A. Yes.

Q. But you did not know that until after the ship had left?

A. Yes.

Q. You say Pelletier was just incapable of handling the men in his department, is that right?

A. Yes, sir.

922 Q. He seemed to be unable to maintain discipline?

A. Yes, sir.

Q. I believe you testified that you said he had given you more trouble than all the other stewards put together, or something like that?

A. Yes, sir.

Recross examination by Mr. Hoskins:

Q. Mr. Fagan, this request for another mess boy that seems to have been so terribly vital, do you know whether Mr. Pelletier asked for that mess boy, or whether it was the request of the crew?

A. I don't know. I am only saying that Captain Reed told me the next morning. He said the steward asked for it.

Q. And when you asked Mr. Pelletier he denied it?
A. Yes.
Q. And you doubted his sincerity?
A. Sir?
Q. You doubted his sincerity?
A. I more or less did.
Q. You more or less did?
A. Yes.
Q. What do you mean you more or less did?
A. He may have done it, or may not have done it.
Q. Did you or did you not doubt his sincerity?
A. Yes, sir; I did.
Q. But you had no factual basis for doubting it?
A. Only what Captain Reed told me.
Q. You had the word of one man as against another man?
A. Yes, sir.
Q. This letter that Captain Reed got, did you see it?
A. Yes, I did.
Q. Do you know what was in it?
A. The only paragraph I saw—the only paragraph I was interested in was in regard to the steward.
Q. What did it say?
A. He said the steward did not know his job, and he was incompetent, or something.
Q. He was incompetent?
A. Yes; he said he did not know his job, and "If I had a good steward here, things would be different."
Q. You say he did not know his job?
A. Yes.
Q. You are sure those words were in the letter?
A. I am just quoting from memory.
Q. He did not know his job?
A. Yes, sir.
Q. And you are sure those words were there?
A. I said I am just quoting from memory.

Examination by Trial Examiner SEAGLE:

Q. Was that letter written to you?
A. No, sir; Captain Lund sent the letter to Captain Reed.
Q. Who is Captain Lund?
A. Captain Lund is captain on the "Bienville."
Q. And he wrote the letter to Captain Reed, is that it?
A. Yes.
Q. And then Captain Reed wrote the letter to the home office?
A. Captain Reed is our port captain.
Q. And he turned that letter over to you?
A. No, sir; he called me in the office to read it.
Q. Captain Reed let you read the letter that had been written by Captain Lund, is that right?
A. Yes; because it had reference to the steward.

By Mr. Hoskins:

Q. What is the normal turn-over in the steward's department, Mr. Fagan?

A. What is the normal turn-over?

Q. Yes.

A. In all ships?

Q. Well, in all of the ships that you have charge of.

A. Well, that is all of them.

Q. Well, all of them, then?

A. About fifteen percent.

Q. That is each voyage?

A. Fifteen percent is the average.

925 Q. Fifteen percent each voyage?

A. Yes, sir.

Q. And eighty-five percent generally sail again?

A. Yes, sir; more or less.

Mr. Hoskins. That is all.

By Trial Examiner Seagle:

Q. Have you ever been a steward yourself?

A. Yes, sir.

Q. You started as an ordinary steward on the ship?

A. No, sir; I started as an ordinary mess boy.

Q. And you worked your way up from mess boy to your present position, is that right?

A. Yes, sir.

Q. How long were you a mess boy?

A. Oh, I don't know, sometimes I would go out as mess boy, and then I would go out as cook, and then, when shipping got bad, going bad, I would go out as a mess boy again.

Q. When you were a mess boy, did you have any complaints to make to anybody about the conditions under which you worked?

A. No, sir; I was always satisfied.

Q. You never found anything wrong?

A. No, sir; not to my knowledge. It has been a long time ago, but I was always contented.

Q. Do you think that a steward's job or a mess boy's job is easy?

926 A. The steward's job?

Q. Yes.

A. I think it is the hardest job there is going to sea.

Q. You would not say it was a bed of roses, would you?

A. I absolutely would not.

Q. On some ships there is often a lot of trouble, isn't there, because of the work the stewards have to do?

A. Because of work?

Q. Because of the conditions on the ship, and everybody is dissatisfied?

A. The stewards don't complain.

Q. Just answer my question, there is dissatisfaction, isn't there?
A. In the steward's department?
Q. Well, the steward's department or any other department?
A. Yes; there is always dissatisfaction.
Q. And what is that due to?
A. Well, it is hard to say; sometimes it is one thing, and sometimes it is another, and sometimes it is the food.
Q. Is it due to the quality of the food?
A. Yes.
Q. It is just bad?
A. No; it is not bad.
Q. Or it is not cooked properly?
A. Sometimes they claim it is not cooked properly.
927 Q. There are frequent complaints of that sort, aren't there, among stewards and mess boys?
A. Yes, sir.
Q. Are there also complaints as to other conditions?
A. They do not come to me.
Q. I am asking you about your personal experience on board ships, not your personal experiences here. You have heard complaints about other ships?
A. Oh, yes.
Q. Though you yourself were always satisfied?
A. Yes, sir.
Q. But that was not true with everybody?
A. No.
Q. There were a lot of complaints?
A. Yes, sir.
Q. What were some of the other complaints?
A. Sometimes they said they did not get their clean linen every week, and I would have to get that straightened out, sometimes; sometimes they would say they did not get enough fresh fruit, or something like that, or on the way across a ship may lose practically half of its vegetables, or something like that, I mean salads, and stuff like that, and you cannot always have fresh fruit at all times.
Q. Well, is there also a complaint that the men would make as to working too long hours?
928 A. If they have it, but at the present time they get paid overtime for it.
Q. I am not referring to the present time, but in the ordinary course of running a vessel; in your experience, stewards have to do a great deal of overtime work, don't they?
A. More or less.
Q. Those complaints make it pretty difficult to manage stewards, don't they?
A. Yes, sir.
Q. It is a very tough job?
A. Yes, sir.

Q. You have received a lot of complaints, haven't you, about conditions on ships with reference to the steward's department? I am not speaking now of the "Bienville," but any other ship you have run?

A. You mean the steward's department as a whole is complaining, and not the whole ship?

Q. With reference to the steward department?

A. No; in the steward department, as a general rule, the average quitting is about fifteen per cent, so their conditions must be good.

Q. But fifteen per cent of the men quit because of dissatisfaction?

A. No; I would not say dissatisfaction; some of them just
929 get tired, and they quit.

Q. You would not say some of them quit because of dissatisfaction?

A. Well, that don't come to me.

Q. But, you just told me it was a hard job to manage stewards?

A. Yes.

Q. Not only because of the conditions under which they work, but the character of the men employed?

A. Yes.

Q. As a rule, seamen are difficult to manage?

A. Yes.

Q. How many ships do you run?

A. I could not make a right estimate off hand, but probably twenty-four or twenty-five.

Q. Have you never had a complaint before in the steward department?

A. From who?

Q. From anybody?

A. The steward complains to me and the men complain to the steward.

Q. But there have been complaints from the men to the steward that you received reports on?

A. Sometimes about different things.

Q. But there have been complaints about the food and the
930 overtime or something else?

A. The steward's department don't complain about food.

Q. I am asking you if you ever received any reports from any of your vessels, have there been complaints as to any of your vessels wherein your chief stewards made reports to you, indicating that there have been complaints?

A. Oh, yes; every trip.

Q. On every trip?

A. Practically all of them.

Q. And what are the complaints?

A. Different things, and the differences sometimes, they straighten them out—it goes from one thing to another; sometimes they say that they want pure jam and that they have imitation jam on board; some-

times they say they did not get enough French-fried potatoes; that was one of the complaints.

Q. And you felt that those complaints were nonsense?

A. I didn't say it was nonsense; we try to straighten them out.

Q. Did they ever complain about working too hard?

A. Who?

Q. The stewards?

A. The chief stewards?

Q. No, not the chief steward, but the men?

A. I don't know how you would mean that, having to work too hard.

981 Q. Did they complain; yes or no. That is a simple question?

A. Yes, they did.

Q. I don't think that that requires a great deal of thought. Now, those complaints are made to the steward, aren't they?

A. From his department to the steward, yes.

Q. And the steward tells you he has had trouble with his men, isn't that true?

A. Yes, sir.

Q. Now, isn't that exactly the same thing that Mr. Pelletier faced?

A. Practically.

Q. Now, you did not fire any of those other men?

A. I did not fire them; none of them.

Q. You did not fire a single chief steward because he had trouble?

A. Well, men were quitting.

Q. Weren't men quitting on the other boats?

A. Very rarely have men quit like that on any other boat, in another port.

Q. But they do quit?

A. Once in a great while.

Q. And you did not fire the steward for that?

A. I do not fire the steward all the time.

Q. Do you know any of the men on the "Bienville" at all well?

A. Do I know them well?

982 Q. Yes; do you have a friend aboard the "Bienville"?

A. I consider all of them my friends.

Q. Know them pretty well?

A. No, I never what you call associated with them. I knew Pelletier.

Q. You knew him pretty well?

A. Yes.

Q. How well did you know him?

A. Just in a business way.

Q. You wouldn't say you were a personal friend of his.

A. I would not say he was really a personal friend, and still in all I would not say I disliked him. I haven't got a thing against the man personally.

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Q. How about the mate on the "Bienville"?
A. The mate on the ships?
Q. The mate on this particular ship?
A. I do not run with any of them. I don't know them real personal. I just see them aboard the ships and see them around the ships.
Q. Did you ever get any letters from the chief steward on board a ship about conditions on board?
A. Very rarely.
Q. You do sometimes?
A. Once in a while.
Q. Under what circumstances does that occur?
933 A. Oh, he just may ask me for some stuff, a new mattress, or things like that.
Q. You mean they write a letter from aboard to ask you about a new mattress?
A. I am talking about the Pan-Atlantic ships, coastwise.
Q. I am not speaking about boats generally, but those that ply between this port and Europe.
A. Very rarely they write me a letter.
Q. They do occasionally?
A. They might write me a personal letter.
Q. Well, who writes you personal letters? Have you got some friends on some ships?
A. The stewards?
Q. No; you said somebody wrote you a letter?
A. No.
Q. Do they or do they not write you letters?
A. The stewards write me.
Q. They do write you?
A. Yes.
Q. How often does that occur?
A. Maybe once or twice a year. After they get on the other side, they may think of something and write me about it.
Q. Is that a regular procedure?
A. No, sir; it is irregular. It is up to them.
Q. When it does happen is it any particular reason for it?
934 A. No, sir.
Q. Does it happen when something unusual occurs?
A. No, sir.
Q. Do you have any personal friends who write you letters from the other side, in the steward service?
A. No.
Q. Who writes you the letters, then, that you referred to?
A. Just like I am saying, they may have nothing else to do and sit down and write me a letter and say everything is all right.
Q. When they have nothing else to do?
A. Yes, sir.
Q. Don't they write you something important that may occur?

A. Well, yes, naturally, if anything out of the ordinary happens
the steward department.
Q. Do you mean life at sea is pretty dull?
A. Yes, sir; sometimes.
Q. Do you have any general instructions issued to your captains
stewards with reference to the reporting of events that occurred
uring the voyage?
A. No, sir.
Q. You have no such general instructions?
A. No, sir.
Q. You testified that Captain Lund wrote a letter to Captain
Reed about some misdemeanor that Mr. Pelletier committed,
is that correct?
A. Something like that.
Q. That would indicate that your captains do occasionally write
tters reporting any little trouble?
A. As a general rule—I don't know.
Q. If they have trouble they sometimes write a letter?
A. If they have anything particular to say.
Q. Are you denying now that this letter exists?
A. I am not denying that this letter exists but I am denying that
aptain Lund wrote to me.
Q. I did not say Captain Lund wrote to you; Captain Lund wrote
Captain Reed.
A. Yes, sir.
Q. And the reason that he wrote to Captain Reed was because
ere was a little trouble on that particular ship?
A. In regards to the steward department.
Q. And he though it was important enough to write a letter?
A. Because there were other things in the letter with reference to
e voyage.
Q. What were the other subjects he wrote the letter on?
A. I did not read the whole letter, I just read that one paragraph.
Q. Nevertheless, he found it important enough to write the letter?
A. Well, he wrote it in his letter.
Q. You have had considerable correspondence with your
steward?
A. Who, me?
Q. Yes.
A. No; very rarely.
Q. Didn't you say that you occasionally get letters from your chief
eward?
A. Very rarely.
Q. And they are sent from European ports?
A. Well, sometimes, and sometimes from New York ports, and
her places, too.
Q. All of your ships have radios, don't they?
A. I think so. We have radio operators.

Q. The "Bienville" had one?
A. I think so.
Q. So has the "Fairland"?
A. Yes.
Q. Did you get any letter as to what had happened on board the "Bienville"?
A. No, sir.
Q. From anybody?
A. No, sir.
Q. Did you, in any other way, did you hear any other way?
A. No, sir; I did not.
Q. Are you sure of that?
937 A. Positive.
Q. Are you swearing to that?
A. Yes, sir.
Q. The first information you had was when you stepped on board the "Bienville"?
A. Yes, sir.
Q. And the first thing you were told was that there had been trouble?
A. Yes; one of the mates, or somebody, told me.
Q. And wouldn't that indicate to you that that was something that was pretty prominent in the mate's mind?
A. Yes, sir; as far as he was concerned.
Q. It was the most important thing that happened on that voyage?
A. Well, when I asked how is everything aboard ship, in reference to the steward's department, when I walked aboard the ship, he voluntarily gave me the information.
Q. I know; but that was so important that it was the first thing he told you?
A. Yes, sir.
Q. But they did not think it was important enough to write you about?
A. I never got a letter from a mate.
Q. You get them from captains?
A. Once in a while.
938 Q. But you do get them?
A. Very rarely.
Q. Now, you testified to the Rotary Club luncheon?
A. Yes, sir.
Q. Which occurred aboard the "Bienville"?
A. Yes, sir.
Q. I understood you were the person who served the luncheon?
A. I supervised.
Q. You were the person, then, were you not?
A. Yes.
Q. And saw that everything—you saw everything that went on?
A. Yes, sir.
Q. Will you tell me what was the occasion of this luncheon?

A. Well, as I understand it, the Rotary Club of Mobile has a luncheon once a week.

Q. This was the regular luncheon?

A. Well, they have it once every week, and when it had to be they thought it was a good novelty to have something like that.

Q. Usually they have a luncheon in a hotel?

A. Yes.

Q. What made them have the luncheon on board the ship?

A. Just for novelty and advertising, I believe.

Q. Who was present at that luncheon?

A. Who was present?

Q. Yes. You were there.

A. You mean the men I was working with?

Q. Yes.

A. Well, there was myself and this fellow Black.

Q. He was present at the luncheon?

A. Who?

Q. Black.

A. Black was in the pantry, just supervising and telling the niggers what to do.

Q. I am not referring to the help, I am referring to the people present at the luncheon.

A. The Rotary Club?

Q. The whole membership of the Rotary Club?

A. I don't know about the entire membership, but I think there was about one hundred and ten men there.

Q. And were there any speeches made at this Rotary Club luncheon?

A. Yes, sir.

Q. Who made the speech?

A. I don't know, I didn't hear them, I was away around on the other side.

Q. I thought you said you were there.

A. I was there, but the speech was made in the lounge and I was in the pantry.

Q. Didn't you bob in and out?

A. No, sir; I did not. I stayed in the pantry because there was more to be done in the pantry than there was in the salon.

Q. How long have you lived in Mobile?

A. Since 1921.

Q. Well, that is a pretty long time?

A. Yes, sir.

Q. Sixteen years?

A. No, now, listen, I didn't live in Mobile ashore.

Q. How many people—you know the people in Mobile pretty well?

A. No, sir; I don't, darn few I know, outside of seamen.

Q. Do you know anybody in the Rotary Club?

A. Yes.

Q. How many?

A. I couldn't say, but offhand, about ten or fifteen; I probably have a speaking acquaintance with about eight.

Q. That would make possibly twenty-three men. Did you see any one of those men at this luncheon?

A. Did I see them?

Q. Did you see any one of those at the luncheon?

A. Yes.

Q. Do I understand you to say that you did not recognize anybody at this luncheon?

A. I recognized them.

941 Q. Now, I am not asking you what they said, but who made the speech?

A. Captain Nicolson was one who made one speech.

Q. Captain Nicolson was one of the speakers?

A. Yes.

Q. Who were the other speakers?

A. I don't know.

Q. What did Captain Nicolson say?

A. I couldn't tell you about it, I did not take note of it.

Q. You cannot remember a single word about what he said?

A. I could not tell you if he told jokes.

Q. You say Captain Nicolson is the only person, as far as you know, who spoke at that luncheon that you recognized?

A. I don't know, I think some other people talked, but I don't know who they were.

Q. How many speakers were there?

A. I don't know.

Q. More than one?

A. I don't know.

Redirect examination by Mr. McCorvey:

Q. Mr. Fagan, the Examiner asked you about complaints on ships and, as I understood it, it is not unusual for a crew of a ship to make complaints to the steward, is that correct?

A. Yes, sir.

942 Q. As to the food that they get, and so on?

A. Yes.

Q. Did you have any experience, outside of the "Bienville," where the members of your department, that is, where the steward's department complained about the steward's department?

A. No, sir; that is the only one.

Q. During your long experience with the Waterman Steamship Corporation, have you ever heard of the captain of any other ship ever writing a letter back to Mobile complaining about the steward or the conduct of the steward department?

A. No, sir; they do not write to Captain Reed, or something like that. If they do, if it has got reference to the steward department

he shows me the paragraph, and I read it, and that is as far as I go.

Q. Do you recall any other occasion on which a captain of a vessel wrote from a foreign port complaining about the steward department?

A. No, sir; not that I recall.

Q. You do not?

A. No, sir.

Mr. McCONVEY. I believe that is all, sir.

Examination by Trial Examiner SEAGLE:

Q. What you do mean is that you don't know of any such letter?

943 A. Yes, sir.

Q. But it may have been written?

A. Yes, sir.

Q. You told me you did not keep track of your correspondence?

A. No, sir.

Q. But this happens to be the one letter that you know about?

A. Yes, sir.

Q. And it is all that you know about?

A. Yes.

Recross-examination by Mr. HOSKINS:

Q. As a general rule, if the crew does not get the right meals and food and rest, they raise plenty of hell; don't they?

A. No; not all the time.

Q. As a general rule?

A. No, sir; they just sometimes bring the matter up as man to man and it is thrashed out in five minutes.

Q. They at least discuss it; don't they?

A. Yes, sir.

Q. Do you know whether there was any great discussion with reference to the food served on the ships of which Mr. Pelletier was chief steward?

A. Yes, sir.

944 Q. Was there?

A. Yes, sir.

Q. Was there an unusual amount?

A. What do you mean; about the food?

Q. Yes.

A. I don't know anything about it because none of the members of the crew talked to me directly.

Q. You know, as a matter of fact, there were no complaints by the members of the crew about the food he served?

A. Not that I know of, myself; nobody has come and told me.

Mr. HOSKINS. That is all.

Trial Examiner SEAGLE. The witness is excused.

(Witness excused.)

CLARENCE REED, a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. McCONVEY:

Q. Your name is Captain Clarence Reed?

A. Yes, sir.

Q. Now, what is your business?

A. I am port captain for the Waterman Steamship Corporation.

Q. Mobile, Alabama?

A. Mobile, Alabama.

Q. How long have you held that position?

A. Since the 13th day of last March 1937.

945 Q. Prior to March 1937, what position did you hold?

A. Master of one of the Waterman ships; the "Topa Topa."

Q. How long were you master?

A. Eleven years at the Waterman Steamship Corporation.

Q. Did you have any experience before that in seafaring matters?

A. Yes, sir; I was third mate, second mate, and chief mate for the Waterman Steamship Corporation.

Q. For a great many years?

A. Seventeen years.

Q. And did you have any further seafaring experience?

A. Yes, sir; I was formerly in the Light House Service and in the quartermaster's corps and in sailing schooners.

Q. How many years, altogether, of maritime experience have you had?

A. About twenty-four.

Q. Captain, are you familiar with the terms used in maritime circles?

A. Yes.

Q. You are familiar with the contract which we had; which the Waterman Steamship Corporation has with the I. S. U. for the furnishing of seamen; are you not?

A. Yes, sir.

Q. That contract gives preference of employment to members of the International Seamen's Union; does it not?

946 A. Yes, sir.

Q. There is a clause in that contract which says it does not apply in cases of prompt reshipment. Just what does that mean in maritime circles; prompt reshipment?

A. Well, prompt reshipment means when a man is paid off at the end of a voyage and he is signed on immediately afterward.

Q. Is that generally done where a ship unloads its cargo and is reloaded and goes right off again?

A. That's right; yes, sir.

Q. Is this expression of "prompt reshipment," in the contracts signed by some forty-five steamship companies with the seamen, does that expression of "prompt reshipment" apply in cases where a ship

tied up at drydock, or goes in the yards for repairs for as much
six or seven days?
A. No, sir.
Q. That cannot, by any stretch of the imagination, be called
prompt reshipment"?
A. No; if you are going to lay your ship up, you do not sign up
our articles until you are ready to go to sea again.
Q. How about laying up at drydock for six or seven days?
A. The same thing applies.
Q. Captain, you have heard most of this testimony?
A. Fifty percent, I would say; I have been in and out.
Q. You have heard a great deal of discussion about customs in
maritime circles, about whether, when a seaman has com-
17 pleted his voyage, he has a right to reemployment?
A. Yes.
Q. Do you know of any custom which gives the seaman the prior
ght to be employed, after his ship has been tied up for repairs and
up in drydock?
A. He has got no more prior right to demand his employment
ack than we would have in demanding him to go back on that ship.
Q. Now, on both of these ships in dispute, the "Bienville" and the
Fairland," each of the crews signed up for one voyage?
A. Yes.
Q. Captain, were you present when the men on either one of those
ips were paid off?
A. I was.
Q. On both ships?
A. I was.
Q. That was in July 1937?
A. It was.
Q. Did any of those seamen make any reference to the fact that
ey had the right to go out on these ships again when they got
ady to sail?
A. They did not.
Q. Did anyone ask you to let them go out on the vessel when it
t ready to sail?
A. They did not.
Q. Did any of the members of the crew of the "Bienville"
18 or the "Fairland" make any contention or claim, in your pres-
ence, and they were being discharged or released because they
d joined the N. M. U.?
A. They did not.
Q. Captain, as a matter of fact, some of the crew of the "Fairland"
ill remained I. S. U. men?
A. My understanding is they were. I did not ask them personally.
Q. And they were laid off with the N. M. U. men, is that right?
A. Yes.

Q. Now, when a ship comes in to go on drydock, as the "Fairland" did, is it the economical thing to do to kill the steam—I believe that is what you call it, or kill the ship; whatever it is?

A. Yes, sir; it is.

Q. Captain, tell the Examiner what you know, of your own knowledge, as to any arrangement previously made before the arrival of the "Fairland" at Tampa, or Mobile, on this voyage in question, relative to having her go on drydock or having any work done on her?

A. Well, before the ship left Mobile on that voyage, we knew that that ship had to be drydocked on her arrival back.

Trial Examiner SEAGLE. You are now speaking of the "Fairland"?

The WITNESS. The "Fairland," for the purpose of having
950 her tail shaft drawn for inspection, which would be about July 10.

Q. Captain, haven't you got your schedule of your inspection, drydocking, and surveys made up for this proceedings?

A. Make—made up, yes.

Q. I will ask you to look at this paper, which is headed: "Inspection—Dry Docking—Surveys," with a lot of ships listed, and among those ships is the "Fairland." Under the heading of "Date drydocked" is 10-28-36. What does that mean?

A. That was the date of her last docking.

Q. Now, in the next column headed "Date due" underneath is 7-28-37?

A. That is the date she has got to be dry docked. Her nine months is up. We are only allowed nine months on those ships.

Q. And she was really dry docked a little before July 28, 1937, wasn't she?

A. Yes, sir.

Q. If she had gone on a trip, would she have gotten back home in time to comply with the law and go on dry dock July 28, 1937?

A. No; she would not.

Q. What regulation is there that requires that dry docking; is that by law?

A. Insurance regulations.

Q. You could not have your insurance policies unless you complied with that?

A. Not very well.

951. Q. And you have to dry dock every nine months?

A. Yes, sir.

Q. And when the ship comes into port, and the nine months period would expire while she was at sea, is it customary to put her on the drydock before that voyage?

A. Yes.

Q. And if the "Fairland" had left, and was at sea when she should have been on drydock, there would have been no opportunity to dry dock her at sea?

A. No, not very well.

Q. And if she had gone out on that trip you would have been violating your insurance contract?

A. Yes.

Q. Now, the next column headed "Tail shaft drawn," 7-10-34. What does that mean?

A. That was the date it was last drawn.

Q. That is July 10, 1934?

A. Yes, sir.

Q. What do you mean by having the tail shaft drawn?

A. That is the date the tail shaft was drawn, that is the part of the shaft that goes through the stern tube of the ship, to which the propeller is fastened, in other words.

Q. In the next column you have "Tail shaft due drawn" and underneath that, 7-10-37, or July 10, 1937, which is exactly three years from the date shown in the preceding column. Will you please explain what that is?

A. Well, the laws of the Bureau of Marine Inspection and Navigation, requires those tail shafts to be drawn every three years for inspection.

Q. And the three year period would expire July 10, 1937?

A. It would.

Q. You made up this record yourself or had it made up from your records?

A. Made up from the records, yes, sir.

Q. Made up under your supervision?

A. Yes, sir.

Q. And you know it is correct?

A. Yes, sir.

Q. So when she came in here on July 5th or 6th, it was the thing to do at that time, under the practice to comply with those requirements, to have the tail shaft drawn on that ship, wasn't it?

A. Yes, sir.

Q. Because if she had gone to sea on July 5th or 6th, the three year period would expire while she was at sea, would it not?

A. Yes.

Q. These other columns here about the steamboat inspection due November 14, 1937, what about that steamboat inspection due November 14, 1937. Did you have time to have it inspected then?

A. She is inspected every year by the Bureau of Marine Inspection and Navigation.

Q. In this column up here I notice the "Bienville" was dry docked on February 5, 1937, and due to be dry docked February 5, 1938, the next year, is that correct?

A. Yes.

Q. That has been attended to, she was dry docked in February 1937?

A. Yes.

Q. And her tail shaft was drawn February 4th, 1937, before this trouble came up, and it is not, it does not have to be withdrawn again until February 4th, 1940, is that correct?

A. That is correct.

Q. Captain, do you know of your own knowledge if those dates you have given here are correct?

A. To the best of my knowledge, they are correct.

Q. Now, can you tell us about when you first knew that the "Fairland" would have to have her tail shaft drawn on July 10, 1937?

A. That schedule is on my desk all the time, it is under glass, and I keep myself posted on those dates.

Q. You really knew, then, the date she would have to have the tail shaft drawn beforehand?

A. I have known it since March, when I came ashore.

Q. And when you say "came ashore," you mean when you
954 became port captain, in March 1937?

A. Yes, sir.

Q. And you then knew that the "Fairland" should go into dry dock and have the tail shaft drawn on July 10, 1937, or as near that date, prior thereto, as she was in port, is that correct?

A. Yes, sir.

Q. In other words, it was no sudden decision to put this boat on dry dock to have this work done?

A. It was not.

Q. Did the fact that some of the crew of the "Fairland" had joined the N. M. U., the National Maritime Union, at any time have anything to do with the "Fairland" being put on dry dock in Mobile?

A. It did not.

Q. It was all prearranged before you knew that any of the crew belonged to the N. M. U. or anything else?

A. That is correct.

Mr. McCorvey. We will offer in evidence the schedule identified by the witness and testified about, showing the dates on which certain inspections and dry docking relative to the "Fairland" and "Bienville" took place.

Trial Examiner Seagle. I understand you got this schedule when you came ashore in March?

The Witness. Yes.

Trial Examiner Seagle. Is there any objection to the ad-
955 mission of the schedule?

Mr. Hoskins. No objection.

Trial Examiner Seagle. The schedule will be admitted as Respondent's Exhibit 24.

(Thereupon the document above referred to was received in evidence and marked as "Respondent's Exhibit No. 24.")

Q. Now, Captain, while on this subject of what, if any, plans had been made in advance to dry dock the "Fairland" or have the "Bienville" tied up for repairs, I will ask you whether or not on July 1,

937, you issued to all departments a statement relative to the steam-
hip "Bienville" showing her schedule on this voyage in question?
A. I did.
Q. Did this statement, which you issued to all departments, read
his way: "The above vessel is due to arrive in Tampa on July 1st,
rom Hamburg, with 797 tons inward cargo for Tampa, 29 Panama
ity, 188 Pensacola, 38 Gulfport, and 1,616 Mobile. From Tampa
he will proceed to Pensacola and Mobile. Voyage No. 2 will end at
idnight following completion of discharge of the Mobile cargo,
t which time the vessel will go on inactive status for a period of
bout twenty days"?
A. I did.
Q. Was that the order?
A. Yes, sir.
Q. And is the paper which I show you, dated July 1, 1937,
56 an exact copy of an order which was given to all departments?
A. It is.
Q. Signed by you?
A. Yes, sir.
Q. That was before you ever heard of any N. M. U. activity in
'ampa, is that correct?
A. Yes.
Q. Do you recall when the "Bienville" reached Tampa?
A. I could not tell right offhand, I don't remember.
57 Q. Do you remember how long she was in Tampa?
A. I do not; no, sir.
Q. Captain, attached to this letter is a sailing schedule of those
hips, including the "Bienville," and it is headed: "Sailing Schedule
pril thru August 1937." Is that the correct statement of the sailing
chedule of the various vessels, including the "Bienville," as furnished
o you by the Traffic Department?
A. As furnished to me by the Traffic Department, subject to change.
Q. I notice that the "Bienville" was to sail May 9 for Havre,
ntwerp, Rotterdam, Bremen, and Hamburg, and was due to return
o the Gulf on July 2nd, the turn around being about sixty days.
Vas that the schedule for the "Bienville" made on this trip?
A. Yes, sir; it is.
Q. And did she return July 2nd—she really did return about July
h or 6th, or somewhere along there?
A. To Mobile, yes; on the sixth.
Q. In other words, in this sailing schedule covering the period
om April to August 1937, I notice you have here the second half
July, and under the heading "Steamer," you have the "Bienville"
med, and in the next column headed "Position," you have the
ord "Repair." Then, you have too "Gulf" July 7th. You
have also in the next column "Due to Sail From" July 30th.
58 Was that the schedule of the "Bienville" at that time?
A. At that time; yes, sir.

Q. And this schedule made up certainly as early as April 1937?

A. Yes, sir.

Q. And covers the period from April through August 1937?

A. Yes, sir.

Q. Now, the lay up there, from the date of July 7th to July 30th, twenty-three days—it didn't take any such time as that for the ship to load or unload cargo?

A. No, sir.

Q. What is the usual time taken by a ship?

A. Five to six days to discharge and load.

Q. So that that twenty-three-day period shown there, where the vessel was due to reach the Gulf, between the time the vessel was due to reach the Gulf and to sail on July 30th, was set aside for repairs?

A. It was.

Q. Do you know of your own knowledge, or did you know as early as April 1937, that that would be plenty of time for the "Bienville" to have her repairs and then leave with return cargo?

A. Yes, sir.

Q. Now, Captain, would you say that this record, this statement I have just inquired about and interrogated you about, is a cor-
959 rect statement furnished you by the Traffic Department of your company?

A. It is.

Q. And you had that in your possession as early as April 1937?

A. Yes, sir.

Mr. McCorvey. We would like to offer in evidence, as the Respondent's Exhibit, the instructions issued by Captain Reed to all departments, dated July 1, 1937, together with the statement headed "Sailing Schedule, April thru August 1937."

Trial Examiner Seagle. Show it to counsel.

Mr. Hoskins. No objection.

Trial Examiner Seagle. The sailing schedule and the attached instruction sheet will be admitted in evidence as Respondent's Exhibit 25.

(Thereupon, the document above referred to was received in evidence and marked "Respondent's Exhibit 25.")

Trial Examiner Seagle. You received the schedule before you received the instruction sheet; did you not?

The Witness: Oh, yes, sir.

Mr. McCorvey. Before you issued the instruction sheet?

The Witness. Yes.

Trial Examiner Seagle. Oh, you issued the instruction?

The Witness. Yes, sir.

Trial Examiner Seagle. Did you say when this sailing schedule was issued, was it back in March?

960 The Witness. I go it, as near as I can remember, sometime in April, but I cannot remember the exact date.

Mr. Lustig. Mr. Examiner, wouldn't it be better to separate those wo?

Trial Examiner Seagle. Well, they are stapled together, and I on't think there will be any confusion.

Q. Captain, you say it takes something like four or five days to nload one of your ships and load it?

A. I don't mean it takes four or five days, Mr. McCorvey, to dis harge the load. You can load a ship in four days. Give them eight o ten days on discharging and loading for the cargo.

Q. Now, in Mobile, can you handle that work more promptly than ou can elsewhere?

A. Yes, sir; we can.

Q. Most of your ships that make any port where you get cargo, ou keep cargo ready for them, and how long does it take to unload nd load them?

A. In the Port of Mobile we can turn around a ship in six days, hat is to discharge the full cargo and load them.

Q. Captain, I will ask you this, if it is not customary and usual to he manner and way of handling a ship, to have the cargo go alongide of where the ship is going to dock several days before the ship arrives, so as to get the ship loaded more promptly?

61 A. When it is to go to the warehouse yes, but the cars are outside and they are switched up.

Q. But the cargo that is to go in the warehouses is there before the hip arrives?

A. Yes.

Q. In regard to the "Bienville" and the "Fairland," did you unoad any cargo to go out on those ships?

A. Not to my knowledge.

Q. That is all under your supervision?

A. I know it.

Q. Captain, wouldn't you say that it would have been quite wasteul to keep the boat's crew on the "Fairland" while they laid it up, vouldn't that have been wasteful practice to keep them on board?

A. Yes.

Mr. Hoskins. I object to the use of the word "Wasteful."

Q. Well, it would not have been economical practice, put it that ray?

A. It would not have been economical practice.

Q. It would not have been good business?

A. No.

Q. Captain, you heard Mr. Ingram's testimony as to the repairs one on the "Fairland" in dry dock?

A. Yes, sir.

Q. He enumerated those repairs fairly accurately, didn't he?

62 A. I imagine he did.

Q. And a lot of those repairs could not possibly have been one except by hauling the ship on to dry dock?

A. Yes.

Q. And it is a rather expensive proposition to take a ship out and dry dock her, isn't it?

A. It is.

Q. Now, Captain, you hear Mr. Fagan, I believe it was, you heard his testimony about your having shown him a letter from the Captain of the "Bienville," written from France, I believe, complaining about, one paragraph of it complaining about Peletier's services. Have you got that letter with you?

A. Yes, sir.

Q. Will you let me see that a moment?

(Handed letter to counsel,)

Q. Is it usual or customary for you to receive letters from masters, captains of your ships, when in foreign ports?

A. I receive an arrival letter from each and every captain on the European ships.

Q. You receive an arrival letter?

A. Yes, sir.

Q. That comes to you at the port, Captain?

A. Yes, sir.

Trial Examiner SEAGLE. By an arrival letter do you mean a letter written at every port at which the ship touches?

963 The WITNESS. No, sir; the first port, the first port abroad.

Trial Examiner SEAGLE. The first port abroad?

The WITNESS. Yes.

Trial Examiner SEAGLE. And if he proceeded to another foreign port you would not receive another letter?

The WITNESS. No; they don't write me from every port.

Q. Who was the captain of the "Bienville" on this trip which commenced in May, when she left here?

A. Lund.

Q. Is that Captain F. O. Lund?

A. Yes, sir.

Q. And on about June 20th, 1937, did you receive from Captain F. O. Lund, master of the Steamship "Bienville," a letter written from LeHavre, France, in which he referred to various matters, and in which he wrote you this—first, I will ask you, was Pelletier the steward on that ship?

A. To the best of my knowledge, he was.

Q. Now, did the captain of that ship write you from France the following: "Anyhow this steward's department——

Trial Examiner SEAGLE. Are you going to put that letter in evidence?

Mr. McCORVEY. Yes.

Trial Examiner SEAGLE. Then, it is not necessary to read it.

Mr. McCORVEY. I was going to offer just the paragraph—

964 we are not interested in anything by the paragraph as to the steward.

Trial Examiner SEAGLE. If you do not want to offer the whole letter, will have any objection to counsel looking at it?

Mr. McCONVEY. None at all.

Q. Captain, is this the letter you received?

A. Yes, sir.

Mr. McCONVEY. I would like to offer that part of the letter reading as follows:

"Anyhow this steward's department don't know how to serve people. Our cooks claiming some overtime every day, they say that they can't get they work done in nine hours. There is nothing much I can do about it now, if I try to do anything, the whole gang may walk out on me. If I had steward that knows his job, I think thing would be different. 2nd cook claim that if he don't start the fire in the stove at five a. m. they can't get the breakfast ready by seven-thirty a. m. The stove is old and don't work so good, but I think if they wanted to they could get their work done alright."

Q. Now, that is the letter you received from Captain Lund?

A. Yes, sir.

Q. During all of your experience with the Waterman Steamship Corporation, have you ever received from any other captain from a foreign port a complaint about any other steward, except this one?

A. Not to my knowledge.

Q. I say have you ever received it?

A. No, sir.

Q. As far as you know you have never received a letter complaining about a steward?

A. I have not seen one.

Q. Captain, suppose you knew a ship was going to be tied up for twenty-three or twenty-four days, roughly, what would it cost to keep a crew on that ship for that length of time, if you wanted to keep that same crew together?

A. Twenty-five days' wages would run between twenty-seven hundred and three thousand dollars.

Q. Would the subsistence come in that?

A. No, sir; that would not cover subsistence.

Q. What would the subsistence be?

A. The figure was around seventy-five cents a day.

Q. It would run around three thousand dollars?

A. Around three thousand dollars; yes.

Mr. McCONVEY. I believe that that is all I want to ask the Captain.

Cross examination by Mr. HOSKINS:

Q. Captain Reed, you are the port captain?

A. Yes, sir.

Q. What are the duties of the port captain?

A. What are the duties of the port captain?

Q. Yes; that is your job, isn't it?

A. To inspect the ships on arrival, to see that they are kept up in first-class condition and to company standard; to see that they

are kept in a sanitary condition, see that the deck stores are put aboard and see that the ship is always kept in seaworthy condition, and so forth, on all sailings.

In my particular job I do appoint the mates, hire the mates and captains, and I also make arrangements to see that they sign on the crews.

Q. You have charge, then, of the actual routine management, isn't that right, when the boat gets in and goes out?

A. Yes; with assistants.

Q. And you have authority to hire and fire captains and mates?

A. Yes, sir.

Q. You have had the job since when?

A. March.

Q. This year?

A. Yes.

Q. About seven or eight months?

A. About seven months.

Q. And before that you were master of the "Topa Topa"?

A. Yes.

Q. How long were you the master of the "Topa Topa"?

A. A little better than two years, two years and two months,
967 I think.

Q. Were you the master of other boats?

A. For Waterman?

Q. Yes.

A. Yes, sir; I was the master of the "Cohoma County," the "West Kyzka," the "City of Alton," "Antinous," "West Madaket," "Gateway City," and "Topa Topa."

Q. And you were with the company, though, during 1938?

A. I was.

Q. Do you know about the case of the "Topa Topa"?

A. No, sir.

Q. You don't know that she was laid up in drydock, or laid up for repairs for sixty days with the entire crew on?

A. I cannot recall that, because probably I was at sea, and I don't know.

Q. Captain, have you ever been on a ship, as captain, before she came into drydock?

A. Yes.

Q. How many times for the Waterman Steamship Corporation?

A. I will say a half dozen times, maybe.

Q. About how long was each ship in drydock that you brought in?

A. Twenty-four hours.

Q. And it sailed again in twenty-four hours?

A. It would come off and go to the loading berth, or lay up.
968 Q. How many of them laid up, as you call it?

A. From the drydock?

Q. Well, you said some of them laid up.

A. We will say the "West Kyzka."
Q. Any others you think of?
A. None that I can recall right now.
Q. How long did that lay up?
A. It laid up thirty days.
Q. Where did it lay up?
A. In Mobile.
Q. How long ago was that?
A. I came off the "West Kyzka," as near as I can remember, about 1932.
Q. And did the crew stay aboard that boat?
A. No, sir; the chief engineer and I and the watchman.
Q. The three of you were on board?
A. Yes, sir.
Q. Was that boat removed from active service?
A. It was; yes.
Q. Now, what other boats have you brought in that have been laid up for a short period, or for any period?
A. We laid up the "Antinous" for speeding-up purposes.
Q. What do you mean you laid her up for speeding-up purposes?
A. Well, to put new engines in it.
Q. How long did that take?
969 A. Well, that took, I believe, about a month.
Q. It was still out of commission at the end of the month?
A. Yes, sir.
Q. Did you ever bring in any boat that was laid up here for a week or ten days?
A. No, sir; I never laid up for a short period.
Q. Every time you would go to drydock you would go in for twenty-four hours?
A. Yes, and then to the reloading berth. That was the "West Kyska."
Q. And it would come out of drydock and go to loading, is that right?
A. Yes, sir.
Q. And then it would sail?
A. Yes.
Q. And your total time in here would be eight to ten days?
A. Well, roughly; yes, sir.
Q. Now, in those cases did some of your crew want to sail again?
A. If they would come back to work, they did not lay off.
Q. You did not lay them off?
A. No, sir; not if the ship went to the loading berth. We had to have a crew.
Q. As a matter of fact, Captain, as master of the boat, you prefer to have the same crew make the next voyage, if they are
970 competent men?

A. Yes, I do; if they are satisfactory men and you do not fire a man that is satisfactory, unless he is unsatisfactory.

Q. Captain, referring to when the boat gets in, you start to unload right away, don't you, I mean the ordinary boat?

A. Unload or load.

Q. And while all this is going on the men are signing off articles, aren't they?

A. Yes.

Q. Signing off and maybe singing on again right away?

A. Yes, sir.

Q. And maybe postponing signing on?

A. Maybe we do; yes, sir.

Q. Until the boat is ready to sail again?

A. Yes, sir.

Q. But the men who go back and stand their watches just the same, unless they leave the boat?

A. I don't object to them signing on.

Q. I don't think you got the question. The boat comes in and they start to unload or load, and while all this is going on you are signing the men off, is that right?

A. Yes.

Q. And maybe you are not ready to sign on again yet, but if the men have been signed off they still come back and stand their watches, if they are not leaving?

971 A. Yes, the ones that is not leaving.

Q. You spoke of prompt reshipment, signing off and signing on. Did you set any time limit there, Captain? Where do you draw the distinction in time as to when a ship sails on prompt reshipment and when it does not?

A. You mean what I would call prompt?

Q. You spoke of the general understanding in the maritime industry.

A. I would say twenty-four hours.

Q. Is that your opinion or the general understanding in the maritime industry?

A. That is my opinion.

Q. And it was also—it was your opinion?

A. Yes.

Q. You were not here speaking for the entire maritime industry?

A. No, sir.

Q. You wouldn't think thirty-six hours would be prompt reshipment?

A. No, I think twenty-four hours is the limit.

Q. Twenty-five is not?

A. No, it is not; I would say twenty-four hours is prompt reshipment, twenty-four hours.

Q. And you don't know what the maritime industry as a whole holds?

A. No, sir; I am not speaking for them.

973 Q. Have you ever seen the term "Prompt Shipment" used in any contract, any maritime contract?

A. I can't say I have.

Q. Only in the I. S. U. contract?

A. In fact that is the only contract I have seen it in.

Q. This one right here is the only time you have seen the term "Prompt Shipment"?

A. I have seen other contracts of the I. S. U. here.

Q. You are speaking of the contracts between the Waterman Steamship Corporation and the I. S. U.?

A. I am speaking of that same agreement.

Q. That is the contract, the one that is in evidence here. That is the only time you have seen it used in a contract?

A. I have had one yellow sheet.

Q. What yellow sheet?

A. The one that came on before that.

Q. It was an I. S. U. contract?

A. Yes, sir.

Q. And you understood this one was executed at the time the old one expired?

A. Yes, sir.

Q. So that the only time you have seen it was in an I. S. U. contract?

A. That is the fact, that is the only time I have ever seen it.

973 Q. Now, you read the letter which was introduced in evidence and which you received from Captain Lund?

A. Yes.

Q. You received that about June 10th, according to the stamp on the letter. is that right?

A. That would be right; yes.

Q. And your captains always write you, you say, from their first foreign port; is that right?

A. Yes, sir.

Q. And they always tell you what has gone wrong along the way?

A. Well, yes; they outline the voyage over, mostly.

Q. Now, the rest of that letter is not in evidence, but I will ask you what else was wrong on the "Bienville's" trip on the way over?

A. Nothing that I know of, only by that letter.

Q. I wish you would look at this letter——

Trial Examiner SEAGLE. Is this letter written by the captain from the first port of call, by the captain of the "Bienville?"

The WITNESS. Yes.

Trial Examiner SEAGLE. It is dated Le Havre, France.

The WITNESS. Yes, sir; May 30th. The only thing I see wrong there is he said he had an awful time with his leg.

Q. There is some comment or some question there about the rather slow voyage over such fine weather. He couldn't get up

974 enough power or steam?

A. Yes; there is something wrong—but he said, "Our passengers seem to be satisfied, at least they didn't say anything to me."

Q. Now, this trouble of not getting up enough steam, did you call in the port engineer and show him that part of the letter?

A. It didn't say anything about the steam.

Q. Well, wouldn't that apply to him?

A. Well, I would take it for granted he got the same letter from Le Havre; he has his chief engineer and he also receives the same letter.

Q. The chief engineer writes to the port engineer?

A. Yes.

Q. And the captain writes to the port captain?

A. Yes.

Q. But the chief steward does not write to the port steward?

A. I have never seen a letter from the steward to the port steward.

Q. And you do not know why he doesn't write?

A. There is a possibility that I may have shown that to the port engineer.

Trial Examiner SEAGLE. Do I understand, then, that the port engineer writes a letter?

The WITNESS. He does.

Trial Examiner SEAGLE. And one would have been written
975 on this voyage also?

The WITNESS. I am pretty sure.

Q. Captain, I notice this letter, the sentence immediately preceding the lines that were read into the record, reads as follows: "As it is now we can't give much service to passengers, if we do, the steward's department overtime will be lot." Can you explain that sentence?

A. We certainly are going to put out instructions for them to try to keep the overtime down, if possible.

Q. You were carrying passengers on this boat?

A. We were.

Q. And you were carrying quite a few passengers on that particular voyage?

A. There was nine or ten, I suppose. I don't know right off hand.

Q. That is rather an unusual number of passengers?

A. No; she is allowed ten.

Q. In other words, she was carrying her full capacity of passengers?

A. Yes, sir, she was, if she was allowed ten. In other words, she is allowed forty-nine persons on board.

Q. How did you interpret that sentence? What understanding did you get out of it?

A. I will have to read it over.

Trial Examiner SEAGLE. It seems to me the whole letter
976 ought to be offered in evidence. It might just as well have been put in.

Mr. McCorvey. Well, let us put it in now. I will just offer to introduce the letter identified by the Captain as having been received by him.

Trial Examiner Seagle. All right, I will describe the letter to save time. The letter is dated May 30th, 1937, and it is written to Captain Reed from LeHavre, France, by Captain Lund. It will be admitted in evidence received as Respondent's Exhibit 26.

(Thereupon, the document above referred to was received in evidence and marked "Respondent's Exhibit 26.")

Q. Captain, will you read the sentence I have just read and tell me your understanding of it?

A. What was that again, please, sir?

Q. Will you refer to the sentence immediately preceding the part with the pencil lines around it, and tell me what you understand that sentence from that sentence?

A. You mean about the overtime?

Q. Yes.

A. "As it is now we can't give much service to passengers, if we do, the steward's departments overtime will be lot."

Q. Yes, what do you understand from that?

A. I understand that it is the passengers, if they demand any extra service, it would undoubtedly run the overtime up.

77 Q. And does it follow, as a conclusion, that the steward's department was just equipped enough to handle just a minimum of service?

A. Well, now, some of those passengers demand a whole lot.

Q. No; will you answer my question?

A. What is it?

Q. Doesn't it follow from that, that your steward's department had only enough personnel to give an minimum amount of service?

A. Yes; there is enough stewards there to give enough service.

Q. Just enough, though?

A. Yes, sir.

Q. And any extra service that the passengers might want in their rooms, as passengers, might cause overtime?

A. Yes; according to this letter.

Q. Passengers have a great propensity for having peculiarities along that line, don't they?

A. That is a fact.

Q. Captain, did you receive any other communications from Captain Lund from LeHavre?

A. No, sir; this is the only letter I received from him on that trip.

Q. Did you receive any other communications of any other kind?

A. Other than his expected arrival reports that comes over the radio.

Q. His expected arrival in Tampa?

78 A. No, sir; his expected arrival into the Gulf.

Q. Where does he send that from?

A. From at sea.

Q. And do you remember anything about his expected arrival reports?

A. No, sir.

Q. That is just routine?

A. Yes, sir.

Q. Does he tell you anything about the conditions on the ship?

A. No, sir; nothing whatever, just the expected arrival, the day, and a. m. or p. m.

Trial Examiner SEAGLE. We will now adjourn until 1:45 p. m.

(Thereupon, a recess was taken until 1:45 o'clock p. m.)

979 AFTER RECESS

(Whereupon, the hearing was resumed, pursuant to taking of recess, at 1:45 o'clock p. m.)

Trial Examiner SEAGLE. The hearing will come to order.

CLARENCE REED, the witness on the stand at the time of the recess, resumed the stand and testified further as follows:

Cross-examination by Mr. HOSKINS:

Q. Captain Reed, I want you to refer to some of the papers that were introduced in evidence this morning, particularly the paper that has been identified as Respondent's Exhibit 24, which is the large sheet headed "Inspection-Dry-docking-Surveys." Will you tell me when and how this particular sheet was made up; the copy that is in evidence?

A. I could not tell you just when it was made up, but it was made up from office reports.

Q. The point I want to get at is, you said you have had something under glass on your desk?

A. That is the paper.

Q. You had one sheet?

A. Yes, sir.

Q. With this same information in it?

A. That is the sheet.

Q. That is the sheet that was under glass?

980 A. Yes.

Q. And that is the same sheet that has been under glass since you got it?

A. Yes.

Q. You stated on direct that it was necessary to have this work done on the "Fairland" within nine months, because it was required by your insurance policy.

A. Yes, sir.

Q. Will you tell me, in your own words, what the provisions or what the provision of your insurance policy is that requires that?

A. Well, you understand that we are required to dry-dock those ships every nine months. I have not read the provisions in the insurance policies, but that is my understanding.

Q. Do you mean by that that nine months is the actual final limit, or is it any period of about nine months? I mean, aren't you allowed any days of grace in there?

A. I assume that we could get permission to go——

Q. There is a procedure whereby you can get an extension of time there?

A. Undoubtedly there is.

Q. Now, the same thing applies, does it not, on the Department of Commerce regulations on drawing the tail shafts?

A. I could not say that they would extend any time on that.

Q. Now, how often must that be done?

A. Every three years.

Q. What date?

A. Well, within the three years.

Q. But couldn't you, as a matter of fact, apply to the Department of Commerce and get an extension on that?

A. Not to my knowledge.

Q. In looking at this chart, I see that there is a difference in the case of the "Bienville" and in the case of the "Fairland" as to this, apparently, I take it to be the nine month insurance business. In other words, it is a year in the case of the "Bienville" and nine months in the case of the "Fairland"?

A. That would be because they are in different trades.

Q. Now, your insurance policy, then, differentiates as between trades?

A. Yes.

Q. Rather than boats?

A. I am sure it does.

Q. You say they are in different trades. Will you tell us what you mean by that?

A. Well, they run in different waters.

Q. Well, now, I don't know what you mean by running in different waters.

A. Well, the "Fairland" runs down in the tropics always and naturally, you have a quicker growth, marine growth, on your vessel bottom, and the "Bienville" trades in cold waters.

Q. But you are not familiar with the exact provisions of your insurance policy?

A. No, sir; I am not.

Q. And you are not familiar with the exact provisions of the Department of Commerce regulations on drawing the tail shaft?

A. I don't know whether we can get an extension of the tail shaft or not.

Q. I see over here in the final column dates under the heading "Insurance expires." What does that mean with relation to these other questions?

A. Well, that is when our policies expire, and we renew them every year.

Q. That has no reference, then, at all, to the time when you must drydock?

A. No.

Q. Now, the "Fairland" was drydocked on October 28, 1936, according to this record, and following the next column over, it had to be drydocked again on July 28, 1937?

A. Yes.

Q. That is nine months to the day?

A. Yes, sir.

Q. Now, then, it was known, back in October, wasn't it?

A. Sir?

983 Q. Then, it was known back in October of last year that that was the final limit, that is, if it was known today it was known last October, wasn't it?

A. Oh, yes, sir.

Q. And the same thing would apply to the drawing of the tail shaft if it had to be done within three years to the day from the time the tail shaft was last drawn, is that correct?

A. That is correct.

Q. Don't you know, as a matter of fact, what day the tail shaft on the "Fairland" was drawn in this year?

A. When she was taken in, whether it was the sixth or the seventh, I can't say.

Q. Was it drawn on the same day?

A. The day she drydocked.

Trial Examiner SEAGLE. The sixth or the seventh of July?

The WITNESS. July; yes, sir.

Q. Now, referring for a moment to these three papers that have been identified as Respondent's Exhibit 25, when did you first see this set of two sheets entitled: "Sailing schedule April through August 1937"?

A. To my nearest recollection, it was some time in April that they put those out.

Q. Now, where did you get that copy?

984 A. Well, those copies are usually left on our desks.

Q. And is this the copy that you had all the time?

A. The fact of the matter is that this is Captain Nicolson's copy and not mine.

Q. What are the figures, what is meant by the figures under the column "Turn Around"?

A. That means the number of days that are required, what they figure they will be on the voyage.

Q. The number of days they figure for the voyage?

A. Yes, sir.

Q. At that time it was contemplated the "Bienville" would sail May 3rd and return July 2nd, is that right? I am reading from the figures here.

A. Of course; they figure ahead.

Q. Well, that was your plan at that time?
A. Yes, sir.
Q. And at the same time, according to this statement, it was contemplated that from July 7th to July 30th the boat would be laid up for repairs, is that correct?
A. Yes, sir.
Q. That was back in April that that was contemplated?
A. In April, yes, sir.
Q. Now, had you ever seen any notice at all that those plans were altered or changed in any way?
A. Not to my recollection; no.
985 Q. Captain, on June 22nd, did you know of any plans whereby the "Bienville" would arrive at Mobile on July 11th and—July 11th and be here until July 15th?
A. I can't recall. I have never seen any schedule of that.
Q. You have never seen any schedule of that?
A. I cannot recall seeing it.
Q. Well, as port captain, would you have been advised of any changes?
A. I think I would have been. I may say there is a possibility that the schedule may have been changed, but it was not put on that, but it is a pretty hard thing for a man to remember that part, having so many ships——
Q. When you came in here this morning and brought these records, I assumed you brought all the records with regard to the "Bienville"?
A. I haven't got no records.
Q. But if you had any records, if there were any, you would have them?
A. They would be in my file.
Q. And you brought all the records you had?
A. Yes.
Q. Now, you don't remember being advised that it would be changed to July 11th to the 15th?
A. I don't remember.
986 Q. And you said if it had been done officially you would have been so advised?
A. I am pretty sure of it.
Q. Well, as port captain, you are bound to be advised?
A. Yes, I have been.
Q. And your files would have reflected it?
A. Yes.
Q. So any statement that it was to be in for over four days, then, n your opinion, would be a misstatement?
A. There is a possibility, now, I don't remember it, and I haven't ot no record of it.
Q. Now, referring to the "Fairland" for a moment again.
A. She would not show on M. O. L. schedules.
Q. And by M. O. L. schedules you mean?
A. These European ships.

Q. On Respondent's Exhibit 25?

A. Yes, sir; it would not be on there.

Trial Examiner SEAGLE. What does M. O. L. stand for?

The WITNESS. Mobile Oceanic Line.

Q. This letter of yours that is dated July 1, 1937, signed by you as port captain, is that the date the letter was written?

A. Yes, sir; to the best of my knowledge.

Q. And when did you receive the information that you embodied in that letter?

A. About cargo and everything?

987 Q. Well, the fact that the boat would proceed from Tampa to Pensacola and then to Mobile.

A. Sometime on the voyage home, I presume.

Q. On the voyage home?

A. Yes.

Q. After the boat left Le Havre, in other words?

A. Yes.

Q. Well, now, did you issue a similar statement with reference to he "Fairland"?

A. No, sir; I did not write the voyage terminations on the Porto Rico boats.

Q. Aren't they in your jurisdiction?

A. They are, but they have a one day schedule, and they know when they end their voyages. They are all on regular schedules, where these ships, we change their ports.

Q. You know the circumstances surrounding the "Fairland" case, though, don't you?

A. I do.

Q. You are thoroughly acquainted with all of that?

A. Yes. We never put out a termination letter on the Porto Rico boats.

Q. What is your understanding as to why the "Fairland" was tied up at this time? At this particular time. And went through these repairs?

A. Because they were due.

988 Q. Because they were due?

A. I am sure that was the reason.

Q. That is the reason?

A. I am sure.

Q. You do not understand the reason to be that they got behind on their schedule?

A. I don't know whether were or not. I would have to check that back, check up on the ship to see if it was behind.

Q. If the schedule on July 22nd, on the "Fairland," provided that it would be in Mobile on July 1st and 2nd; New Orleans, July 3rd; San Juan, Porto Rico, July 10th and 12th; Ponce, Porto Rico, July 13th and 15th; and Mobile July 22nd to July 23rd, would you have been advised of any changes?

A. I certainly would have.

Q. And were you so advised?

A. I don't remember.

Q. Well, you searched your records when you brought these papers in, didn't you?

A. Oh, yes.

Q. And you found nothing in there advising you of that?

A. I did not look up the "Fairland."

Q. Do you remember being advised?

A. I can't say.

Q. It is rather unusual to cancel out a trip, though, isn't it, Captain?

989 A. No; it has happened with those Porto Rican boats.

Q. How often has it happened in the last year?

A. If you get behind schedule, you can——

Q. How often in the past year have you cancelled a prearranged schedule for a Porto Rican boat?

A. I have a recollection of one.

Q. How long ago was that?

A. I have a recollection that the "Fairport" missed a week about a month or six weeks ago.

Q. And if that had been done on the "Fairland" you would have been notified, or should be?

A. I am not going to commit myself. I could not say. I cannot remember that far back.

Q. But you will admit that it is a very unusual instance?

A. Yes; it is an unusual instance, no doubt.

Q. I notice Exhibit 25 is addressed to "All Departments." What departments does that go to?

A. All departments up in the office, such as traffic, operating, purchasing, accounting, and I guess that covers all the departments in the office.

Q. You stated, I believe, at the time these two boats came in there was no cargo for the "Bienville" and the "Fairland"?

A. Not to my knowledge.

Q. You are not sure of that?

A. I would not swear to it.

990 Q. There may very well have been cargoes, but you just don't recall?

A. I don't recall it, and I don't check on the cargoes. It is not my job to know whether it is in the dock or not.

Q. That is another part I want to clear up. You don't know of your own knowledge that there were no cargoes?

A. No.

Q. Referring for a moment to Exhibit 24 again, I notice a steamship listed here as the "Pan American" and one the "Pan Atlantic" and the "Pan Royal." Do they belong to the Waterman Steamship Corporation?

A. They belong to the Pan Atlantic Steamship Corporation.

Q. Are the organizations, the two businesses, intermingled? Is that what the report would indicate?

A. We handle them for the Pan Atlantic.

Q. There is no differentiation made on this report, is there, generally, in the conduct of the business?

A. Not as I know of; they are different corporations.

Q. And you are the port captain, though, for both lines?

A. Yes; I handle those ships.

Q. And also the Mobile-Oceanic and the Everett Steamship Company?

A. Yes, sir.

Q. And does that apply to the other port officers, to your knowledge?

991 A. To my knowledge, it does.

Q. I believe you stated, in your opinion, it would cost around twenty-seven hundred to three thousand dollars to keep a full crew on board a boat for twenty-seven or thirty days, something like that; is that correct?

A. Twenty-three days.

Q. Was it twenty-three you were asked about?

A. Yes, sir; our monthly wages on those boats run about thirty-seven to thirty-eight hundred dollars.

Q. That is considering the whole crew, officers, and everyone else?

A. That is wages.

Q. You don't mean, then, by that, that that is what your net cost would be; you don't mean to estimate that there would be no value received for that; do you?

A. We would have them do some work.

Q. Very conceivably they could do five thousand dollars' worth of work if it had to be done and could be done in a month.

A. No; we could not get five thousand dollars' worth of work done; I am sure of that.

Q. And if any members of the crew could do work that outside people were hired for, it would reduce net cost; wouldn't it?

A. To some extent.

992 Q. Have you told us any case, Captain, where your boats have not gone into drydock within the proper insurance time in the past year?

A. You mean before their time?

Q. Before their what?

A. Before their time, you mean?

Q. I mean all of your boats have got to enter drydock every nine months or twelve months, depending on the waters they ply in?

A. Yes, sir; and if they touch ground in the meantime, we have got to put them in drydock at the earliest moment.

Q. You also get them in within nine months; don't you?

A. We try to get them in within nine months.

Q. But there have been cases where you have gone a few days over the nine months?

A. I don't know of any, not since I have been ashore.

Q. Every boat, since you have been ashore, has been drydocked within nine months or twelve months?

A. Within the time limits; yes, sir.

Q. Do you ordinarily route your sailings so that it can be done within the last week of the nine months?

A. No.

Q. And it was rather unusual in these cases; wasn't it?

A. I wouldn't say it was unusual.

Q. Well, that was the fact in these cases; wasn't it?

993 A. Well, yes; and the figures bear out the facts.

Q. And you are not able to explain why there was one set of plans for the boats in April, another one on June 22nd, and a third set of plans along in July?

A. I cannot explain that; no, sir.

Mr. HOSKINS. I believe that that is all.

Trial Examiner SEAGLE. Do you have any questions, Judge Howard?

Mr. HOWARD. Yes, sir.

By Mr. HOWARD:

Q. Captain, when you came on, in the performance of your duties as port captain of the Waterman Steamship Corporation, were there or not, in the City of Mobile, two actively existing and organized labor unions dealing with seamen?

A. Yes, sir.

Q. One of them was the International Seamen's Union and had a contract with you?

A. Yes.

Q. And the other one was the National Maritime Union affiliated with the C. I. O.?

A. Yes.

Q. Has it been a fact, Captain, that when you were in charge of your duties, that a good many efforts were made to get you to employ members of the National Maritime Union?

A. I wouldn't say there were a good many efforts made; no.

994 I think I was questioned twice on it.

Q. Now, when the matter came up in your office, and you were performing your duties, did you take the position that you did not want National Maritime Union men employed on your ships, or did you take the position that you had no right, under your contract, to employ them?

Mr. HOSKINS. I object to that question.

Trial Examiner SEAGLE. Will you state the grounds?

Mr. HOSKINS. Briefly, that it calls for a conclusion. He has already stated the fact, and this calls for a mental conclusion, and on the

general ground that it is incompetent, irrelevant, and immaterial to the position the man took.

Trial Examiner SEAGLE. Your objection is overruled.

Mr. HOWARD. Will you read the question, Mr. Reporter?

(Question read.)

The WITNESS. That I had no right, under our contract.

Q. Now, how did you understand and enforce the contract with respect to the particular provision regarding prompt reshipment of men?

A. Say that again.

Q. I mean this, captain, did the question ever come up with the Waterman Steamship Corporation, insofar as your duties were concerned, in the actual carrying out of the contract, to determine whether or not, under its provisions as to prompt reshipment,
995 you had a right to employ members of other unions, other that the International Seamen's Union. Did that ever come up?

A. No, sir.

Q. As a matter of fact, ever since you have been port captain of the Waterman Steamship Company your crews have been practically one hundred percent members of the International Seamen's Union, were they not?

A. Well, they were supposed to be. I never checked that up to find out.

Q. Well, have you ever been present on board ships when the men were being paid off?

A. Yes.

Q. Did you see the agent or delegate of the International Seamen's Union, or as presently organized, the Seamen's Reorganization Committee, collect dues at the time the men were discharged and paid off?

A. I did.

Q. From what you saw there, could you tell us whether or not the men that were being paid off, after making a foreign voyage, were members of the International Seamen's Union, and, as such, paid their dues to the agent?

A. That is the only direct reason I have to believe that they was I. S. U. men, by paying their dues to their delegates.

Q. Were you told at all times to procure from the International Seamen's Union a sufficient number of men to properly
956 operate and man the boats of the Waterman Steamship Corporation?

A. Yes, sir.

Q. Now, did you ever at any time, after the discharge of the crew at Mobile, as far as your duties went, and the selection of a new crew was concerned, did you ever discriminate against any man because he belonged to any union?

A. No; I never asked one of them yet which union they belonged to.

Q. Did you ever use your influence, or in any wise interfere with or stop the employment of any man because he was a member of the National Maritime Union?

Mr. HOSKINS. I object to this line of questions. They are all calling for conclusions of law. It is *the* for the Board to determine whether or not he did discriminate.

Trial Examiner SEAGLE. I think they are also improper because you are going beyond the scope of the issues raised by the intervention. The objection is sustained.

Mr. HOWARD. We except.

Q. Captain, when these ships arrived, the "Bienville" and the "Fairland," and were laid up at Mobile, and when it came time to get new crews for those ships, how were they employed?

A. Through I. S. U. Hall.

Q. Do you know whether or not some of these men men-
997 tioned in the complaint are now working on the ships for the Waterman Steamship Corporation?

A. Some of them are.

Q. Have you ever at any time, by conferring with the International Seamen's Union, or by discharging or firing men, stopped their reemployment because they were members of the National Maritime Union?

Mr. HOSKINS. I object to the question. I don't understand it in the first place.

Trial Examiner SEAGLE. Will you read the question?

(Question read.)

Mr. HOSKINS. I object to the question as being too vague to be answered.

Mr. HOWARD. May I withdraw the question and put it in this way?

Trial Examiner SEAGLE. Yes.

Q. Have you, as port captain of the Waterman Steamship Corporation, ever discharged any of these men mentioned in the complaint or prevented their reemployment in any way at all?

A. No.

Q. So long as a man was fit and a good seaman, did you take him as he came from the International Seamen's Union Hall?

A. Yes, sir.

Q. Now, up until the time of this hearing, Captain, have
998 you ever heard the suggestion made that a seaman, who had signed on a foreign boat, and had completed his trip, the voyage across the ocean, and had been paid off or discharged, had any right of reemployment, except by the rotation system?

Mr. HOSKINS. I object to that question. It has been adequately covered by this witness both on direct and cross.

Trial Examiner SEAGLE. Objection overruled.

(Question read.)

The Witness. There is no obligations on either party, the man is not obligated to sign on, and we are not obligated in any way to take him on the ship.

Q. Now, if these two vessels, after these two vessels, the "Bienville" and the "Fairland," tied up at Mobile and got ready to go out, did you then, because of the fact that on the previous voyage they had joined a separate union, give any orders that they were not to be allowed to go on another trip?

A. No, sir.

Q. Did you check the crew list to see if any of the men that had joined the N. M. U. were being shipped?

A. I did not.

Q. Captain, have you ever heard, during your long career as a Master Mariner, or as Port Captain, any such practice where a ship was laid up as long as the "Bienville" or the "Fairland," of
999 making the necessary arrangements, where the crew was paid off or discharged, providing for the calling back of the crew after she got ready to sail, or was that left entirely to the labor union with which you had a contract?

A. It is entirely up to the union to furnish the crew. I don't go out and collect these crews.

Redirect examination by Mr. McConvey:

Q. Captain, in regard to this schedule for the "Bienville," that Mr. Hoskins asked you about, the only schedule that you are familiar with is the schedule that you introduced in evidence here, that would go through August 1937, and which shows the "Bienville" would be in Mobile from July 7th to July 30th for repairs; is that right?

A. Yes, sir; that is all I know about.

Q. Do you know anything about a stipulation in a case No. R-157, where it was stated by some attorneys in New York, representing the Waterman Steamship Corporation, that the ships of the Waterman Steamship Corporation will be in the United States Ports as follows during the coming weeks:

The "Bienville" in Tampa, July 2nd.
Panama City, July 5th.
Pensacola, July 8th.
Gulfport, July 9th.
Mobile, July 11th to 15th.

The "Bienville" was here after July 15th, was it not?

A. July 15th, after July 15th.

1000 Q. But this schedule, going through the month of August, 1937, which you have introduced in evidence, that is the only schedule you had?

A. Yes, sir.

Q. You don't know anything about a stipulation, about the stipulation I asked you about?

A. No, sir.

Q. But it was here from July 11th to 15th; as a matter of fact, it got here by July 6th, didn't it?

A. I don't know anything about it at all.

Q. You don't know anything about any other schedule?

A. No, sir.

Q. But she was here on July 15th?

A. She was here July 15th.

Q. She was here July 11th and to July 15th and on up until about the latter part of July or the first of August?

A. I think she sailed around the 23rd or the 24th.

Q. That was the "Bienville"?

A. Yes, sir.

Q. How long was the "Bienville" tied up at Mobile?

A. About sixteen to seventeen days, as near as I can recall. I might be off on that.

Q. You are not positive about it?

A. No, sir.

Q. As a matter of fact, wasn't she here twenty-seven days, Captain?

1001 Mr. HOSKINS. The witness has stated he could not recall, and there is no need of trying to get him to say twenty-seven.

Q. Captain, you testified that it would take some six or eight days to load, unload, and complete, fully complete a cargo, that is, when the vessel is completely filled up, is that right?

A. Yes, sir; those are twenty-four hour days too.

Q. Now, when you are going to touch on four or five ports in the Gulf, for instance, Panama City, Tampa, Gulfport, you mean a total of six or eight days at all of those ports?

A. She can do it in six or eight days, to get back to all of those ports.

Q. Six or eight days for the trip?

A. Yes.

Q. But you would not take six or eight days in port at Mobile?

A. No; oh, no; she don't load and unload everything here.

Q. Generally, how long are those vessels in the port of Mobile to unload or load?

A. About three to four days; say two to four average, would cover it better.

Q. In regard to the construction of the words, or the meaning of the words "prompt reshipment," you stated in your

1002 opinion it is prompt reshipment when referring to reshipment made in twenty-four hours?

A. Yes, sir.

Q. Is it your understanding that that is the time that is generally understood to be prompt reshipment, or do you know?

A. Well, that is my opinion.

Q. Some inquiry was made of you relative to letters written by the Chief Engineer to the Port Engineer. Now, a letter written by

the Chief Engineer to the Port Engineer would refer to matters in the engineer's department, and would not refer to the steward's department, in all probability, would it?

A. It would refer to the engineer's department; engine room department.

Mr. McCorvey. I think that that is all.

Re-cross-examination by Mr. Hoskins:

Q. Captain, as Port Captain, do you always supervise the paying off and signing off of the articles?

A. I don't supervise it, no, sir; I am there, I am present.

Q. Always?

A. Yes, always.

Q. Is it one of your duties to police the paying of dues to the I. S. U. representatives?

A. No, sir! I don't interfere in no way, shape, nor form.

Q. In observations made with reference to paying of dues by I. S. U. men, is that a result of purely casual observation?

1003 A. Just purely casual observation.

Q. No active, actual concentrated check on your part at all?

A. No, sir; it was immaterial to me whether they paid or not.

Mr. Hoskins. That is all.

Redirect examination by Mr. McCorvey:

Q. Captain, did you ever see the I. S. U. man on board ship doing anything other than collect dues?

A. No; I did not pay any strict attention whatever to what they were doing.

Examination by Trial Examiner:

Q. Then, you don't know what they were doing, is that your answer?

A. I did not follow them around to see what they were doing.

Q. Did I understand you to say, Captain, that it takes from two to four days to load up ships here in Mobile?

A. Yes, sir; that is the average time.

Q. Would you say that it has never taken any longer than four days, and that is the average time?

A. That is the average time.

Q. There have been ships that have taken longer?

A. Yes, sir; where conditions delay them, and sometimes we have had to wait for cargo.

Q. How long have you had to wait on occasions?

1004 A. I would say not more than six days here in Mobile, around the port of Mobile, when we were in the berth ready for loading.

Q. So there have been frequent occasions when it has taken that much time?

A. I would not say frequent occasions.

Q. But it happens occasionally?

A. Yes.

Q. And you would say it takes a minimum of two days—two to four days on the average?

A. On the average; yes, sir.

Q. Now, just how do you reconcile your statement that prompt re-shipment means within twenty-four hours? Could you ever have prompt re-shipment in the port of Mobile within twenty-four hours, if it takes two to four days to load a ship?

A. Well, the fact of the matter is, I have never seen them complete those articles one hundred percent the first sitting when the Commissioner went down there to sign. There is always a man ashore or something, that they have to get ahold of. Some of them are not on the ship.

Q. I am not sure that you understood my question. You gave as your definition of prompt reshipment, within twenty-four hours. Now, if I understand your statement correctly, as to the time it takes to load and unload a ship, it takes two to four days?

1005 A. Yes, sir.

Q. Then, it is prompt re-shipment if a ship comes in and goes right out again, isn't it?

A. Yes, sir. In other words, we had one last night—we had one at eight o'clock last night and it went out at eight o'clock this morning. I consider that prompt re-shipment.

Q. But that ship was not loaded?

A. She loaded some cargo.

Q. But not very much?

A. No.

Q. A ship that came in with a full cargo and took other cargo on, would take a lot more time?

A. Yes, sir; it would take a lot more time.

Q. Wouldn't that be prompt re-shipment?

A. Oh, but I didn't say that would apply to the crew.

Q. Well, you mean the prompt reshipment does not apply to the crew at all?

A. It applies to the crew, but doesn't apply to the cargo.

Q. Well, re-shipping the crew, you are now referring merely to the time that it takes them to sign up new articles?

A. Yes, sir; if you can complete the set of articles and get all your men together, have them all in in twenty-four hours, that that is prompt re-shipment.

Q. So you are only referring as to the time it takes to sign the articles?

1006 A. Not the time it takes; no, sir.

Q. Or the time within which it takes to sign the articles?

A. Yes, the average that the articles would take, for prompt re-shipment.

Q. But when you go on right out again, just to come in and load or reload, you usually sign up the same crew, unless they quit?

A. Yes; unless they quit or we have to discharge them.

Q. And you have never known a case where it takes more than twenty-four hours to re-sign a crew?

A. Oh, there is cases where it takes more than twenty-four hours.

Q. Doesn't it take a week sometimes before you sign them all up?

A. Oh, no; it has never taken a week, after we open the articles.

Q. Does it take three or four days, sometimes?

A. No.

Q. What is your best recollection as to the time?

A. I say probably, as a rule, if in the afternoon we open up the articles——

Q. I am not asking you as to what it takes as a rule.

A. We started signing on in the afternoon and probably went on thorugh and we would be to noon the next day before we got the articles completed.

1007 Q. With reference to the listing of the "Bienville," on Respondent's Exhibit 24, I observe under the column "Steamship Inspection" that the month has been left blank in the case of the "Bienville." Is there any reason for that?

A. I don't know, sir. The date has been left blank?

Q. The month is there, and the year, but there is no date.

A. I don't know any reason why that was left out.

Trial examiner SEAGLE. That is all.

Redirect examination by Mr. MCCORVEY:

Q. When you used the term "prompt reshipment" you referred, then, to the prompt re-shipment of the crew, as I understand it?

A. Yes, sir; that is what I took it for granted it means.

Q. When the crew signs?

A. Signs up to ship out again; yes.

Q. Signs up to ship out again in twenty-four hours, that is what you mean by prompt re-shipment?

A. Yes, sir.

Trial examiner SEAGLE. What did you take it to mean with reference to this contract with the I. S. U.? Did you have any different understanding in that connection?

The WITNESS. I have not. That is my interpretation of prompt re-shipment; twenty-four hours.

Mr. MCCORVEY. That is all.

Trial Examiner SEAGLE. The witness is excused.

1008 Mr. MCCORVEY. That is all on our case. Judge Howard has some testimony.

Trial Examiner SEAGLE. The respondent rests its case. Do you have any testimony, Judge Howard?

Mr. HOWARD. Yes, sir.

WILLIAM ROSS, a witness called by and on behalf of the Intervening Union, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. HOWARD:

Q. Mr. Ross, are you connected with the intervener in this case, the Seamen's Reorganization Committee of the American Federation of Labor?

A. Yes, sir.

Q. What is your position, Mr. Ross?

A. Business agent and organizer.

Q. Mr. Ross, could you tell us when the International Seamen's Union of America went into the Seamen's Reorganization Committee?

A. In the port of Mobile on September 20, 1937.

Q. Were you acting for the International Seamen's Union at the port of Mobile, Alabama, at the time this contract was entered into?

A. I was.

Q. Will you tell us, Mr. Ross, whether or not at that time
1009 the International Seamen's Union of America was affiliated with the American Federation of Labor?

A. Yes, sir.

Q. Did it have a constitution?

A. Absolutely; yes.

Q. Did the seamen who were members of the International Seamen's Union of America participiate in it as a self-governing organization?

A. Absolutely; yes, sir.

Q. Now, when that contract was made with the Waterman Steamship Corporation at that time, were your officers, who made that contract, authorized under your form of government, and under your constitution, to make contracts for the men?

A. Absolutely; yes, sir; through their District Committee.

Q. Now, this organization at that time, the International Seamen's Union of America, was it operating an open shop at Mobile for seamen?

A. Before we got the agreement, naturally, it was an open shop proposition; yes, sir.

Q. At the time of the making of this contract, had you had a contract before with the Waterman Steamship Corporation?

A. The first contract was made in 1935, April, I think it was; April or May of 1935.

Q. What position did you hold at that time?

A. I was business agent for the International Seamen's
1010 Union of America, that is the three divisions of the International Seamen's Union of America.

Q. What are those three divisions?

A. Marine Cooks and Stewards Union of Atlantic and Gulf; the Marine Firemen, Oilers, Water-Tenders of the Atlantic and Gulf, and the Eastern Gulf Sailers' Association.

Q. Did you operate an office here in Mobile?

A. At first, yes; on Government Street.

Q. How long have you been operating a sailors' hall here?

A. Since 1934.

Q. Now, since this last amendment to the Waterman contract, have you kept a hiring hall?

A. Absolutely; that system was originated by the membership in meetings assembled, wherein a preference clause—they came to the satisfactory conclusion, to give equal rights to every man by a rotation system, and it was satisfactory to the balance of the members in this port.

Q. Now, at the time you all negotiated this contract with the seamen, or for the seamen, what proportion of your membership were on the Waterman ships?

A. You mean in 1935?

Q. Yes.

A. I would say from seventy-five to eighty percent.

Q. Can you tell us at the present time, under the present op-
1011 eration of this contract, what proportion of the crews of the Waterman vessels are manned by members of the International Seamen's Union?

A. One hundred percent.

Q. Mr. Ross, you have been present during a good part of this proceeding, haven't you?

A. Parts of it; yes, sir.

Q. You have heard references made to an expression in the contract, or a term, "prompt re-shipment" of seamen?

A. Yes, sir.

Q. How long have you been in this business of being an organizer for the American Federation of Labor?

A. Well, I am organizer for the American Federation of Labor since September 20th, 1937, but I have been a business agent and delegate here in the International Seamen's Union since 1915.

Q. Now, have you ever had to do with the executive end of handling these contracts for members of the International Seamen's Union of America, where that expression "prompt re-shipment" was used?

A. "Prompt re-shipment" is just a matter of a quick turnover, a vessel coming in, and its contract expiring, in which it loads and makes another trip. That is prompt reshipment.

Q. I will ask you to state this, and will you please state to the Trial Examiner, what you mean by the system, that you have
1011½ used, of putting men on ships of the Waterman Steamship Corporation, that you referred to as the rotation system. What is that?

A. The rotation system is this way: That members of the International Seamen's Union, naturally, has got the privilege and the benefits of the Union they belong to, and they go by that system of rotation when any replacements is got to be made by the First Mate in the Deck Department, the First Assistant of the Engine Department, or the Chief Steward, they may call the Union Hall for certain types of men, and we send them, according to their request; it may be for a water tender in the black gang, and they have got to have their inspection certificate, a certificate of efficiency to prove what they are, and then we call the list out, and if their name is in, and is called, and they wish to take the job, then they go.

Q. Now, during the years of your experience in the shipping of crews on vessels, have you heard that expression generally used, "prompt reshipment"?

A. Sure; it is a common expression.

Q. What has been your understanding of the meaning of that expression?

A. From, we will say, from one hour to thirty-six hours.

Q. Now, as far as prompt reshipment is concerned, have you, in the carrying out of this contract, observed the rule that when
1012 there is prompt reshipment, to mean that the rotation system which you use did not apply to that?

A. Naturally, the members who come in on a ship, who don't wish to leave, and they are International Seamen's Union men, naturally, they are entitled to stay. That is the same on every occasion. There is incidents here in the drydock where we sent crews to vessels controlled by the National Maritime Union, and of course, they naturally objected to the International Seamen's Union men coming over there, and we, in turn, retaliated by having International Seamen's Union men on vessels which we have taken over, and have contracts with.

Q. You have heard mention here, that some men have been discriminated against by the Waterman Steamship Corporation?

A. Never in any case.

Q. You remember the instance where certain crews of the "Bienville" and the "Fairland" went over to the National Maritime Union on some trip, in the course of the voyage?

A. Yes.

Q. Now, did you afterwards, under the rotation system, send back some of those men to the Waterman Steamship Corporation to be reemployed?

A. On other vessels; yes, sir.

Q. Under what practice did you do that?

A. They came up to me and asked me if they could come back into the International Seamen's Union, and I told them they
1013 certainly could if they want to, and went to work and swore to an affidavit that they would prove true and loyal allegiance to the American Federation of Labor and to this Union, and they

went to the bottom of the list and took their rotation along with the other fellows.

Q. And are they now members of the International Seamen's Union?

A. Quite a few or them.

Q. Have you ever, in your rotation system, discriminated against those men mentioned in the complaint, because they had once before joined the National Maritime Union?

Mr. LUSTIG. I object to that.

Trial Examiner SEAGLE. I don't think the question is relevant.

Mr. HOWARD. We except.

Q. Now, Mr. Ross, at the time this contract was amended and changed, did there grow up in the port of Mobile an organization known as the National Maritime Union?

A. The origination of that was the first International Seamen's Union, rank and file, and we took an injunction out against them for using the name "International Seamen's Union," and overnight they changed their name to the National Maritime Union, when we got the injunction against them.

Trial Examiner SEAGLE. Is that an answer to your question, Judge Howard?

1014 Mr. HOWARD. I beg your pardon?

Trial Examiner SEAGLE. I say, do you consider that an answer to your question?

Will you read the question again, Mr. Reporter?

(Question read.)

Trial Examiner SEAGLE. When did that happen?

The WITNESS. That happened a few months back.

Trial Examiner SEAGLE. When?

The WITNESS. A few months back.

Trial Examiner SEAGLE. A few months back of what?

The WITNESS. This year.

Trial Examiner SEAGLE. What month?

The WITNESS. I could not tell you exactly, unless I got the records, Mr. Examiner.

Q. Now, Mr. Ross, you signed, did you not, this petition of intervention on behalf of the American Federation of Labor?

A. Yes, sir.

Q. Were you authorized to sign it?

A. Yes.

Q. Can you tell us in what manner or how the Seamen's Reorganization Committee was constituted and took over the International Seamen's Union?

A. The American Federation of Labor called the executives of the International Seamen's Union to Washington, and they
1015 asked them to resign their positions as executives of the International Seamen's Union, which they did, and the American Federation of Labor became the successor to the International Seamen's Union.

Q. Now, as such successor under this contract, Mr. Ross, has the Seamen's Reorganization Committee continued to carry out the obligations, and perform the obligations that have been mentioned under this contract?

A. Absolutely; yes, sir.

Q. Have the executive officers of both the International Seamen's Union of America and the American Federation of Labor recognized as valid your action at Mobile under this contract?

A. Absolutely; yes, sir.

Q. Have your rights as the Seamen's Reorganization Committee been questioned by either parties to the contract, the American Steamship Owners' Association or the Waterman Steamship Corporation?

A. No, sir. Why I make so sure of that is that under the N. L. R. B. voting they have the I. S. U., A. F. of L., successor on that order.

Q. Mr. Ross, have you heard the testimony given at this hearing with respect to the preferential right that members of the National Maritime Union have claimed in this proceeding to have upon the completion of a voyage after they are paid off or discharged?

1016 A. They have no such preference, whatever, because they divorced themselves from the International Seamen's Union of America, and thereby they have no rights to any benefits that the International Seamen's Union may have to give them.

Q. At the time these men mentioned in the complaint went to sea, did they procure their positions as members of the International Seamen's Union?

A. Yes, sir.

Q. Did you, as members of the International Seamen's Union, ship them under the rotation system on board those boats?

A. Yes, sir.

Q. Did they, during this voyage, surrender their books and take the books of the National Maritime Union?

A. Yes, sir.

Q. Have any of those men, after divorcing themselve from the International Seamen's Union, ever come to you, as the head of the Seamen's Reorganization Committee, and claimed that you had deprived them of ony rights to reship?

A. They could not very well, because they are not members of the International Seamen's Union, and thereby they are not entitled to any rights or benefits which the International Seamen's Union may be able to give them.

Q. Mr. Ross, at the time that the "Bienville" and the "Fairland" came to Mobile, and it was discovered that these members of the crew, most of them, or some of them, had separated from

1017 the International Seamen's Union of America, as far as you know, has the Waterman Steamship Corporation ever discriminated against those men?

Mr. Lustig. I object to that.

Trial Examiner SEAGLE. Judge, you will please confine yourself to the question of the making of the contract, its validity and its interpretation.

Mr. HOWARD. We except.

Q. Now, as to the execution of the contract, have you, as the local authority of the International Seamen's Union, and as the properly delegated authority of the Seamen's Reorganization Committee, insisted and demanded that the Waterman Steamship Company should carry out this contract?

A. Yes.

Q. Have you consulted counsel in that regards?

A. I consulted you in regard to that.

Q. Did you state to the Waterman Steamship Corporation or to any of its executive officers or counsel, that you had to insist upon it, and if it were not carried out as written that you would bring suit for damages against them?

A. I did so; yes, sir.

Q. Was that prior to coming into port of these ships, the "Fairland" and the "Bienville"?

A. No: that was later.

Q. About what time was it you notified the Waterman Com-
1018 pany that you would hold them in damages?

A. Possibly when they were about to put the crew back on the vessel, when I told Captain Nicholson that those men had divorced themselves from the International Seamen's Union and that the new crew going on there must come to the union hall under their rotation system.

Q. Did you tell him, through counsel, that you would hold the company for damages if they did not do that?

A. I sure did; yes, sir.

Mr. HOWARD. That is all.

Cross-examination by Mr. HOSKINS:

Q. Mr. Ross, you are the business agent and organizer now for the Seamen's Reorganization Committee; is that right?

A. Yes, sir.

Q. When did you first learn that the crew of the "Bienville" had changed from the I. S. U. to the N. M. U.?

A. When they returned to port here.

Q. You did not know it before then?

A. Yes, sir; I believe I was notified by the Tampa agent.

Q. Mr. Epps, from Tampa, notified you?

A. Epps, yes.

Q. That same night they changed over?

A. I don't know about the same night.

Q. July 3rd or 4th?

1019 A. I don't know the date, I did not keep the dates at the time, because I just took it that those men had changed and I sent a delegate down to the pier when the "Bienville" came in.

Q. And you also made representations to the Waterman Steamship Corporation about the fact that they had changed over?

A. At that time; yes, sir.

Q. Now, when did you first learn that the "Fairland" changed over; at the same time?

A. When she came in here.

Q. You learned it from Tampa also?

A. I didn't keep no dates on that stuff. I just kept the rotation system of shipping lists in the union hall, and for every ship that comes in here, no matter when she comes in, if they call for a crew.

Q. I will ask you to confine your answers to my questions. Your agent in Tampa also let you know that the crew of the "Fairland" changed over?

A. No; I don't think he did.

Q. They both changed the same night?

A. Possibly they did, I don't know.

Q. Didn't he let you know, when he notified you; didn't he tell you about both boats?

A. I don't think he did, because I didn't take nobody's word for it. I went down as soon as the vessels came in to find out what it was.

1019½ Q. You admit he told you about the "Bienville"?

A. He did, over the phone.

Q. Didn't he also tell you at the same time about the "Fairland"?

A. I cannot remember whether he did or not.

Q. You would not swear that he did not tell you that?

A. I am on oath now, Mr. Prosecutor.

Q. I am not a prosecutor.

A. It looks like you are.

Trial Examiner SEAGLE. Will you please answer Mr. Hoskins' questions and don't argue.

The WITNESS. He asked me if I swore to it, Mr. Examiner, and I am under oath.

Trial Examiner SEAGLE. Well, the answer to that is yes or no.

The WITNESS. I do not know for sure.

Q. Now, in March 1936, when you executed the contract that is in existence, that is in the record now——

A. (Interrupting.) The first contract, 1935 was the first contract signed by me.

Q. Mr. Ross, I am speaking of the contract that was executed in March 1936.

A. That was executed in New York.

Q. Were you in on the execution of that?

A. No, sir; I was in Mobile at the time.

Q. And you don't know anything about the execution of it?

1020 A. I know about the execution, because I was going to hold up two of his ships until such time as the contract was signed.

Q. At the time this contract was signed in March 1936, did you make any check of your membership cards against the Waterman pay roll to see how many members you had on the Waterman boats?

A. No, sir.

Q. You made no such check?

A. No, sir.

Q. In other words, any statements about that by you as to how many you have, is your own opinion, how many people you have on the Waterman boats; that was your own opinion?

A. Yes, sir.

Q. Now, when did you first make, either yourself or through counsel, representations to the Waterman Steamship Corporation, that if they did not fulfill and carry out the contract you would bring suit for damages?

A. Oh, that was about the time they were to reengage a crew for the "Bienville" after extensive repairs.

Q. Didn't you tell them the same thing several months or a year ago?

A. Several months or a year ago?

Q. Yes; not speaking with reference to the "Bienville," but just told them generally that you would do that?

A. I don't know what you mean, Mr. Prosecutor.

1021 Q. Several months to a year ago, did you have a conversation the Chief Counsel of the Waterman Steamship Corporation in which you told him if they did not carry out the contract you would bring suit?

A. That is about the only time I remember saying that.

Q. After the boats got in here?

A. When they were about to reship their new crew.

Q. That is when you told him that?

A. That is when I told him that.

Q. You did not make any statement in writing, did you?

A. I made it over the phone, but of course, I saw my attorney here, Mr. Howard.

Q. There was one point I wanted to clear up.

Trial Examiner Seagle. By the way, with whom did you have that telephone conversation?

The Witness. Captain Nicolson of the Waterman Steamship Corporation.

Q. Had you ever gotten some men back on Waterman boats who had come to you and severed their N. M. U. affiliation and who had given you certain affidavits?

A. Yes.

Q. And then you let them go back on the rotation list?

A. Back to the bottom of the list under the rotation system.

Q. There is no one man on your rotation list who did not

1022 take out an I. S. U. book, is there?

A. No, sir.

Q. Do you remember when it was that the I. S. U. executives were called to Washington, that you testified about?

A. I couldn't tell you.

Q. About when, Mr. Ross? Was it this fall or this summer?

A. It was around August, I should think. Now, I wouldn't be sure about that, now. Maybe September.

Q. When you gave your time limit or your opinion or interpretation of the words "prompt reshipment," that was your own personal opinion, wasn't it, Mr. Ross?

A. Well, naturally, Mr. Prosecutor, I must just go to work and take an opinion from what I have heard. Prompt in the dictionary that I looked at is immediately.

Trial Examiner SEAGLE. You mean you looked it up in the dictionary?

The WITNESS. I have not looked it up yet, but I will, though, as soon as I get to it.

Q. Mr. Ross, the point I want to get at is, would you state that the entire Maritime industry considers that any time within thirty-six hours is the maximum limitation for prompt reshipment?

A. I should say from one to thirty-six hours.

Q. I know that you should, but would the entire maritime industry?

1023 A. I can only go by my opinion, Mr. Prosecutor.

Q. That is what I want to know, that is your own opinion, isn't it?

A. Yes, sir.

Q. Now, after the I. S. U. came into the Seamen's Reorganization Committee, did the Waterman Steamship Corporation expressly and formally ratify the succession of the reorganization committee to the I. S. U.?

A. No; that was understood. Of course, there was the International Seamen's Union and the American Federation of Labor executives.

Q. There has been no formal ratification by the Waterman Steamship Corporation that you know of?

A. They have recognized it verbally; yes.

Q. That is all, just verbally; is that right?

A. Yes, sir.

Examination by TRIAL EXAMINER:

Q. Can you state exactly when the reorganization commenced?

A. In the port of Mobile here, September 20th, I think it is.

Q. Not referring merely to the port of Mobile, but generally speaking?

A. Well, I could not tell you about generally speaking, because I am only going by the port of Mobile.

Q. Well, the reorganization is not confined, however, to

1024 the port of Mobile?

A. No, sir; it is confined to the Atlantic Coast and the Gulf, I should say—possibly a couple of weeks before September 20th.

Mr. Hoskins. That is all I have.

By Mr. Lustig:

Q. Mr. Ross, how many years experience have you had as an organizer or as a member of the I. S. U.?

A. Twenty-five years as a seaman, and as a member of the organization since 1914.

Q. You are familiar with various types of agreements between labor unions and employers?

A. I think so; yes, sir.

Q. And you have heard about the open shop?

A. Open shop?

Q. Yes; open shops.

A. I heard the expression.

Q. Do you know what is meant by an open shop?

A. I really don't know what an open shop is, outside of there is very few union men in the place, and there is no agreements. That is not a union shop, naturally.

Q. Where there is no agreements it is known as an open shop, is that right?

A. Pretty much.

Q. Did you ever hear of a preferential agreement?

A. Preferential agreement; yes.

1025 Q. This agreement under discussion here is what is known as a preferential agreement, isn't it?

A. It has a preferential clause in there which gives you a right to a closed shop, as he is talking about, as I call it.

Q. You don't call this a preferential agreement?

A. That is a preference clause in there, where you can make it a union shop if you wish. We have the union shop now.

Q. You say you can make it a closed shop, if you wish?

A. You can make it a union shop if you wish. We don't use the word "closed."

Q. By union shop you mean a closed shop in labor talk; in labor language?

A. Union shop, I call it. What you call it, I don't know.

Q. What do you mean by a union shop?

A. I mean that one hundred percent union in that shop.

Q. One union?

Trial Examiner Seagle. May I ask what is the purpose of this discussion?

Mr. Lustig. Mr. Trial Examiner, I am trying to show this agreement, which he claims is a closed-shop agreement, is not a closed-shop agreement.

Trial Examiner Seagle. Well, the agreement speaks for itself. We have been into that time and again. Is that all you had in mind?

Mr. Lustig. That is not all. Just a few more questions.

1026 Q. I am now referring to Respondent's Exhibit 14, that is the agreement, Mr. Ross, which was signed by the I. S. U. and various companies in 1936, and I am going to ask you whether the American Merchant Lines, which signed this agreement with the I. S. U., still observes this agreement?

Mr. HOWARD. We object to that. I understand the complaint here is directed against the Waterman Steamship Corporation, and we submit it would be irrelevant whether somebody who made the agreement chose to violate it. I don't think that it makes any difference whether somebody else repudiated that contract. It would be irrelevant here. This is a dispute with a company which does live up to it.

Trial Examiner SEAGLE. Are you trying to show that the companies did not live up to it?

Mr. LUSTIG. I am trying to show that the I. S. U. has not enforced and upheld the validity of this contract, and I think that that is proper cross-examination, and that many other lines which have signed it have since repudiated it.

Mr. MCCORVEY. Mr. Examiner, they certainly made an effort to uphold it down here.

Trial Examiner SEAGLE. Objection sustained.

Q. Mr. Ross, have you seen contracts which are known as union shop, as you call them, union-shop contracts, or closed contracts, signed between employers and labor unions, wherein and 1027 whereby the contract provides that all hiring is to be done through union halls?

A. I am led to believe there is one on the Pacific Coast right now.

Q. Yes; there is one on the Pacific Coast.

A. Yes; but through progressiveness of members of any organization, naturally, they are going to look to the best way possible in benefits to themselves, and as to the best way they can ship, and they are relying on their power, and know they can get it.

Q. When this agreement was entered into between the Waterman Steamship Corporation and the I. S. U., no mention was made that all hiring was to be done through the I. S. U. Hall, was there, Mr. Ross?

A. The membership decreed it later.

Q. Will you answer my question, Mr. Ross, please.

A. What do you want to know.

Mr. LUSTIG. Will you read the question, Mr. Stenographer?

(Question read.)

The WITNESS. Well, I can only answer that in this way.

Q. Yes or no.

A. That the preference clause was in there, and the union shop was made out by the membership in meetings assembled.

Trial Examiner SEAGLE. Will you answer that? That is not an answer. That question can be answered yes or no.

The WITNESS. Well, that is the only way I could answer it.

1028 Q. Well, there is no such clause in this contract, is there?

Trial Examiner SEAGLE. The question is is there a provision in that contract requiring the hiring of crews only through the Union Hall?

The WITNESS. I don't think there is.

Q. That was not due to the fact that the I. S. U. did not want that clause in here, it was because the Waterman Steamship Corporation at that time refused to sign a closed shop contract?

A. Are you asking me a question, Mister, or is he telling me something?

Trial Examiner SEAGLE. He is asking you a question. May I remind you that you are here to answer questions?

The WITNESS. I realize that, Mr. Examiner.

Trial Examiner SEAGLE. Well, it is quite obvious he is asking you a question. Will the stenographer read it?

Mr. LUSTIG. Will you read the question, please, Mr. Stenographer?

(Question read.)

A. In 1935 the agreement was, the original, the same as it is now, with that preference clause, section 2, I believe it is.

Trial Examiner SEAGLE. That is not the question. Don't you understand the question? Read him the question.

(Question read.)

1028½ The WITNESS. This was a contract that was given to forty-nine companies, or fifty-odd companies, and while the Waterman Company was the one objectionable party to it, they signed everything too.

Trial Examiner SEAGLE. That is not the question. You testified that there was no clause in this agreement requiring the hiring of crews through the union halls. Do you understand that?

The WITNESS. Yes.

Trial Examiner SEAGLE. Now, the next question is, why wasn't there such a clause in the agreement? The question is not what clause is in the agreement, but what clause is not in the agreement. Was it because the Waterman Steamship Corporation objected to such a clause?

The WITNESS. No; I didn't draw this agreement and I don't know exactly why it is not in there.

Trial Examiner SEAGLE. Your answer is you don't know anything at all about it?

The WITNESS. I don't know anything about that certain clause.

Q. There was a strike down here, wasn't there, after this agreement was signed?

A. A strike?

Q. Yes.

A. Who with?

1029 Q. By the rank and file members of the I. S. U?

A. The rank and file?

Q. Yes.

A. Oh, that outlaw strike you are talking about?

Q. You may term it an outlaw strike, but it was a strike by the I. S. U. members.

A. No; the I. S. U. kept their agreements unviolated all the way through.

Q. Some of the men who were members of the I. S. U. went on strike?

A. I guess they did.

Q. Was this agreement ever submitted to the membership for ratification?

A. Yes, sir.

Q. Are you familiar with the result of the voting, the referendum vote, taken by the membership of the I. S. U.?

A. It was taken through the International Convention in the election of a District Committee, and they had a perfect right to sign contracts.

Q. After the contracts were signed, after these contracts were signed by the properly constituted officers of the I. S. U., was this agreement ratified, was it referred to the membership for a referendum vote to ratify the action of the officers?

A. They were given that, they were authorized to sign through their convention that was held and the election of the officers
1030 and the District Committee, they were authorized to sign contracts for the men, the members of the International Seamen's Union.

Q. Can you bear with me a moment. This agreement was signed in March, the 9th day of March 1936; is that right, Mr. Ross?

A. Huh?

Q. The agreement was signed between the International Seamen's Union, its properly constituted officers, and some shipowners represented by what is known as the Seagoing Personnel Committee of the Atlantic and Gulf Shipowners; is that correct?

A. It was signed, and the last time it was signed here is the amendment there on February 3, 1937.

Q. It was amended?

A. March 9, and then September 28th and then February 3rd.

Q. 1937?

A. Yes.

Q. And at that time the contract, as amended, signed by the officers of the Union, and the Seagoing Personnel Committee of the Atlantic and Gulf Shipowners, is that right?

A. Yes.

Q. Was the agreement then subsequently submitted to a referendum vote? Do you know what I mean by referendum vote, Mr. Ross?

A. No; what does it mean?

1031 Q. Are you familiar with the Constitution of the International Seamen's Union?

A. I got a copy here.

Trial Examiner SEAGLE (Addressing Mr. Howard.) You know it is perfectly improper to consult with a witness while he is on the stand.

Q. May I call your attention to page 23, article 15, of the constitution. Do you see the word "referendum" there, Mr. Witness?

A. Yes.

Q. Do you know what that word means?

A. No; I don't know what it means; no.

Q. And what is your position with the I. S. U.? Are you an organizer with the I. S. U., Mr. Ross?

A. I am organizer for the I. S. U.; yes, sir.

Q. Appointed by the American Federation of Labor?

A. Yes.

Q. Did you or did you not know that this agreement was referred to the membership of the I. S. U. in order to enable them to ratify this agreement by a referendum vote? Do you understand that, Mr. Ross?

Trial Examiner SEAGLE. The witness has said he doesn't understand what a referendum is.

Mr. LUSTIG. That is all.

Trial Examiner SEAGLE. Do you have any questions, Mr.

1032 McCorvey?

Mr. MCCORVEY. I have none.

Redirect examination by Mr. HOWARD:

Q. Mr. Ross, what can you tell us with respect to the difference, if there is any, as brought forth by the question of counsel, about hiring men through the Hall—what other way do you have of hiring people?

A. There is no other way.

Q. There is no other way?

A. You cannot hire them if they are not members of the International Seamen's Union.

Q. Can you tell us what the difference in effect, or practice, would be, if you had a contract like this in evidence giving your men a preference, what the difference would be if you hired them on the docks or hired them through the hall? Would there be any difference in that?

A. Quite a difference; the men would not receive equal rights of the organization.

Q. In other words, the rotation system would be kept at the hall?

A. Yes, sir.

Q. And you keep your records there?

A. Yes.

Q. Showing each member who should get a fair chance for a job?

A. Yes, sir.

1033 Q. Isn't it a fact that the system of shipping gives each man a chance to look at the record to see what chance he is getting?

A. Absolutely; there is one copy in the office and one down stairs

Q. Is this contract the contract which you said had been made ough the duly constituted officers with the different steamship npanies?
A. Yes, sir; this is the contract [referring to Respondent's Exhibit
Q. You consider this Respondent's Exhibit 14 as a true and cor- copy of that agreement which you acted under?
A. Yes, sir.
Q. Did you ever distribute to the members of your union copies hat contract so they would know what their rights were?
A. Yes, sir.
Q. And you gave each member that went on the Waterman ships opy of it?
A: Each ship's delegate was awarded a copy of it in each depart- nt.

Recross examination by Mr. LUSTIG:

Q. Mr. Ross, in March 1936, or going back to the first time this contract was executed between I. S. U. and the Waterman 4 Steamship Corporation, what was the practice the Waterman Steamship Corporation used in hiring its help? Did it hire ll from the Hall?
A. Absolutely; yes, sir.
Q. How do you know that? I am speaking of 1935, Mr. Ross.
A. 1935?
Q. Yes.
A. Oh, they hired from the docks.
Q. And they hired through your hall too?
A. Yes.
Q. And at that time this contract was in effect too, wasn't it?
A. Yes, sir.
Q. So at that time the I. S. U. did not consider it a breach of tract by the Waterman Steamship Corporation, a breach of this tract, to hire men at the docks and through your union hall?
A. As we built up in strength and educated our members to a em of equality——
Trial Examiner SEAGLE. Will you answer the question as it is put ou? That can be answered yes or no. Read the question.
(Question read.)
Mr. LUSTIG. Yes or no?
The WITNESS. No.

Q. That prevailed throughout the year of 1935, that the 5 Waterman Company hired on docks and through the Union Hall, is that correct?
A. Yes, sir.
Q. Now, we come to March 1936. When this agreement was signed, hat time, and for some time, some short time after, the Waterman mship Corporation hired men on the dock and through the Union ll?

A. 1936?
Q. Yes.
A. No, sir.
Q. When did the Waterman Steamship Company stop hiring men on the docks and hire them exclusively through the Union Hall?
A. They stopped that in around September, October 1935.
Q. In September or October 1935 you had what you call an outlaw movement within the I. S. U.?
A. Yes, sir.
Q. And that was known, commonly known, as a rank and file movement, wasn't it?
A. Yes, sir.
Q. Among the seamen?
A. Yes, sir.
Q. And when that rank and file movement grew within the I. S. U., the Waterman Steamship Corporation began to hire men exclusively through the Union Hall?
A. No; it was long before that.
1036 Q. Well, you just said they began to give the union hall preference and stopped hiring on the dock. That is my recollection of your testimony.
A. August, September, and October, I just forget now.
Q. 1936?
A. I have to get the records to find out exactly.
Q. In 1936?
A. In 1935, I am talking about.
Q. And it was many months after you had signed an agreement, which was similar or practically the same agreement, with the exception of the rate of wages to be paid, as the agreement now in evidence known as Respondent's Exhibit 14. Shall I translate that for you, Mr. Ross, in simple English?
A. If I could explain it to you, I think it was in April and May 1935, that the contract was signed.
Trial Examiner SEAGLE. Mr. Ross, may I say that the contract seems to indicate that it was signed in January 1935.
The WITNESS. No, sir; it was signed by the Waterman Steamship Corporation, I think it was, around April or May of that same year.
Trial Examiner SEAGLE. Well, the dates given on the first page of the green paper, the contract, are January 1st, 1935——
The WITNESS. Yes; but there were some companies came in
1037 later.
Trial Examiner SEAGLE. You mean that the Waterman Steamship Company adhered to this agreement only after April or May?
The WITNESS. April or May, I think it was.
Q. So, Mr. Ross, today you give a different interpretation of this contract than you did at the time when it was signed; is that right?
A. I give a different interpretation of it?
Q. Yes; of your rights under the contracts?

A. Well, the preference was put in there just for the sole purpose, nd I told you on two or three occasions in regard to that, since we ducated the members and they in meetings assembled signed, it would e the best way to protect their own problems, and naturally, the reference clause became a union shop, and the rotation system was naugurated.

Q. Wasn't the preference clause put in there in order to enable the ompany to escape or avoid a closed union shop?

A. No; I don't think it was. There are very few cases where pref- rence is allowed. This is one of the exceptions.

Mr. LUSTIG. That is all.

Redirect examination by Mr. HOWARD:

Q. Mr. Ross, with respect to the hiring of men through the hall, wasn't that a system under the rules of the union which gives 038 each member of the union a fairer chance to get a job?

A. Absolutely.

Q. Didn't it also give the companies a quicker and more efficient ethod of getting crews?

A. Yes, sir.

Mr. HOWARD. That is all.

Examination by TRIAL EXAMINER:

Q. Mr. Ross, have you ever been a seaman yourself?

A. Yes, sir.

Q. How many years?

A. Twenty-five or thi y years.

Q. Did you sail on a great many ships?

A. I sailed on quite a number, under various flags.

Q. You, therefore, know a good deal about the signing of articles?

A. Yes, sir.

Q. And you usually sign articles at the commencement of a voyage?

A. At the commencement of a voyage.

Q. And you sign off at the termination of the voyage?

A. At the termination of the voyage.

Q. Now, have you ever, in your experi ce, signed articles at the rmination of a voyage for another voyage, when that voyage was ot to take place for the period of a week or more?

A. You mean if I ever signed articles after signing off a set 039 of articles to make a trip?

Q. Yes.

A. I did not make one trip after; that was about the limit.

Q. You mean you never made two trips in succession?

A. Very seldom.

Q. You mean you always took a little vacation after each trip?

A. Well, whenever I got broke I would go to sea again.

Q. You mean to say in your fifteen or twenty years of seagoing perience you never signed articles for another voyage after the mpletion of one?

A. Yes; I have signed on two or three times.

Q. Just two or three times in fifteen years?

A. Yes, sir.

Q. Well, those were probably very vivid experiences, and they should stand out in your memory, since they were so few. Can you tell me what the lapse of time was between those voyages?

A. Oh, possibly, I believe a few weeks; possibly three weeks.

Q. They were three weeks?

A. Possibly; it depends on how broke I was.

Q. And when did you sign up for the new voyage?

A. Well, as soon as I was employed again by the first assistant in the engine room where I worked.

Q. What I am asking is this, the boat would come in and
1040 you would be discharged?

A. Yes, sir.

Q. Now, on the occasion when you decided to make another voyage, did you sign articles then and there, within a day or so, after the ship docked?

A. They did; yes; or possibly within thirty-six hours.

Q. How long was it between the time you signed articles and the time the ship actually sailed?

A. I never said I signed them. You asked the question.

Q. I am asking you the hypothetical question, did you actually sign the articles?

A. On two or three occasions I have.

Q. Now, I am asking you what was the time elapsed between voyages?

A. You are paid off on one table and you sign on on another table.

Q. That is not my question. I am asking you how much time elapsed between the two trips?

A. Before you signed, you mean?

Q. After you signed on, did the vessel actually sail again?

A. Oh, I made about five of those trips on the "Leviathan," and she went over in five days, was two or three days over there, about fifteen day trips, I guess.

Q. I am afraid you do not understand my question.

A. I don't understand what you mean, Mr. Examiner.

1041 Redirect examination by Mr. HOWARD:

Q. On those occasions, Mr. Ross, if you signed on the same ship, that is, you signed articles again to make another voyage on the same ship, how long would you generally be in port before you sailed, after you signed those articles to make a new voyage?

A. Oh, you would come in, we will say, on Monday and Tuesday and leave Wednesday or Thursday.

Mr. HOWARD. That is all.

Recross examination by Mr. HOSKINS:

Q. Mr. Ross, have you ever sailed freighters?

A. Yes, sir.

Q. Have you ever come in and sailed out again on a freighter?
A. Yes.
Q. How long ago?
A. Around 1922.
Mr. Hoskins. That is all.
Trial Examiner Seagle. The witness is excused.

1042 Clarence Reed, having previously been sworn, was recalled and testified further as follows:

Examination by Trial Examiner:

Q. Captain Reed, I wonder if I can get some enlightenment from you on the questions put to Mr. Ross. You heard those questions I asked him, did you not?
A. Yes, sir.
Q. My question is this. How often do crews re-sign for another voyage, and the vessel does not actually sail until sometimes later?
A. Well, let me show you this illustration. Say a ship comes into Mobile from a foreign voyage and pays off Monday; say is going to sail Friday. You usually sign articles about Thursday; you start Thursday.
Q. I thought you said you usually signed them more or less immediately when the men come in?
A. That is if a ship is going to sail within a day.
Q. And if they were going to sail a week later, you would not sign them on when the ship came in?
A. No, sir; I would not.
Q. And there has never been such an occasion, in your experience?
A. No; I would not sign articles or men on a ship a week be-

1043 fore she was going to sail. Suppose this man wanted to get off; you would have that trouble of bringing them before the Shipping Commissioner to sign them off again, whereas if they were just working on the ship, and got paid off on the ship up there——
Q. Would they maybe work on the ship for a week loading and reloading cargo?
A. Yes, sir; and suppose he decides not to go out?
Q. Well, there is always that possibility, but how would you be better off if the crew signed and decided not to go out?
A. I suppose—suppose we put it this way, a man gets sick——
Q. They would be subject to some penalty if they signed on and did not go out where a week elapsed or two days even elapsed?
A. The only penalty they would be subject to is the forfeit of their wages.
Q. Then, your answer to my question is that you do not sign the men up until you are about ready to sail; is that right?
A. Let us make it twenty-four hours before sailing as a safe time to start signing them up.
Q. You never did it more than twenty-four hours?
A. I have done it; yes, sir.

Q. What is the longest period, in your experience?
A. In my experience——
Q. Before sailing, between signing up and sailing?
A. Two days from the time the articles are opened.

1044 By Mr. McCorvey:

Q. Captain, as I understand it, when you get one man signed, one man on your crew signed, and one of them is signed off, he has to sign off here in the last column?
A. Yes.
Q. And the master is also supposed to sign?
A. Yes, sir.
Q. And where the master signs on that line, there is only one line provided for him and if he signs that every man on the crew is not released?
A. Well, if a man has signed his articles, and you want to pay him off, you have got to take him before the Shipping Commissioner to do it.

By Mr. Hoskins:

Q. Captain, I would like to make reference to the illustration mentioned. As the boat gets in on a Monday and sails the following Friday, you generally wait until Thursday to sign the articles?
A. Yes, sir.
Q. But if the crew that came in is satisfactory, and wanted to keep right on working, would you wait until Thursday?
A. Yes; you just don't fire a man for nothing.
Q. You don't let him go just as soon as he signs the articles?
A. He is free to go.
Q. And if he wants to stay you keep him working up until Thursday or Friday?
A. Yes.

1045 Trial Examiner Seagle. I know, but the fact that you are free to quit your job at any time—I think that any man who is free, and twenty-one, and a citizen of the United States can always quit his job, if he doesn't like it, and as long as he doesn't do it, he still regards himself as employed by the particular employer. You regard yourself as employed by the Waterman Steamship Corporation, and they cannot put you out unless you have a written contract.

The Witness. I have no contract.

Trial Examiner Seagle. You do regard yourself as being employed by the Waterman Steamship Corporation?

The Witness. Yes, sir; I have not been notified otherwise.

Trial Examiner Seagle. The witness is excused.

Mr. Howard. Mr. Examiner, we had several men to examine, three of whom have gone out on the "Afoundria," and we cannot use them, but we have two or three witnesses, and we want to briefly examine them.

Mr. HOSKINS. Mr. Examiner, may I ask, if it is not out of order, that Judge Howard state the purpose of these further examinations?

Trial Examiner SEAGLE. Do you object to that?

Mr. HOWARD. No, sir. I will say this——

Trial Examiner SEAGLE. Would you like the witnesses to leave the room while the question is being discussed?

1046 Mr. HOWARD. I only had one question to ask them, to the effect of what they know of the preferential right of a sailor to go out on another voyage.

Mr. HOSKINS. Mr. Examiner, I submit that that is not within the scope of the permission granted to the intervenor.

Mr. HOWARD. May I ask Mr. Hoskins what rights he thinks I have?

Mr. HOSKINS. The rights as outlined by the Trial Examiner at the beginning of the hearing.

Trial Examiner SEAGLE. You are here, as I understand it, for the purpose of defending the validity of the contract and also to contribute, as I understand it, to a proper understanding of its terms.

Mr. HOWARD. It would seem to me rather important to the American Federation of Labor and the Reorganization Committee of Seamen who have the contract, and as I understand it, Mr. Hoskin's position is, he seems to have the idea that the seamen here on the Waterman ships are in the same position, as far as the spirit and intent of the Wagner Act is concerned in these Mobile ports—they have some sort of employment, and that is of a prominent nature, and if that is true, they have the same preferential rights, then, as the members of the National Maritime Union who wants to quit a ship and come back—he seems to think that they can say to the International Seamen's Union, now, we have sailed on
1047 a ship, you have a contract, but during the voyage we slipped on over on you fellows, and we know you have a contract, but once we got on the ship we are going to stay on there the rest of our natural lives——

Trial Examiner SEAGLE. I don't think that is contended at all. I don't think they contend they have that right, to stay there for the rest of their natural lives. Seamen very rarely work all their natural lives for the one steamship company, as you are well aware; they frequently quit. The question is how they are to be treated up to the time they do quit. I suggest you put your witness on the stand.

Mr. HOWARD. It will only take a few minutes, much less time than to consider the objection.

Mr. HOSKINS. May I have a general objection to questions along that line?

Trial Examiner SEAGLE. Well, no questions have been put yet, and I think your objection is premature.

RAY SWEENEY, a witness, called by and on behalf of the Intervening Union, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. HOWARD:

Q. Mr. Sweeney, what is your occupation?

A. Marine fireman and oiler.

Q. How long have you been going to sea foreign?

A. Since 1923.

1048 Q. Have you been continuously employed as a seaman since that time?

A. Off and on; yes, sir.

Q. And you have worked for the Waterman Steamship Corporation?

A. I have.

Q. Have you been present during part of the testimony and heard testimony of various members of the National Maritime Union, in which they said, after making a trip, and they had not been fired, they had been paid off and discharged at their home port, after making the foreign voyage, that they were still employed by the company?

A. Yes, sir.

Q. Have you up until the time you heard that testimony ever heard it contended by any seaman that he did have a right to regular employment?

A. No; I never heard of it before.

Q. Have you never heard of any such custom as that?

A. No; not in going to sea, I have not.

Q. On the other hand, has it always been the custom amongst your fellow sea faring people that once they made a trip, made a trip foreign and came into port, and were paid off and discharged, that that ended all of the rights of the parties to that contract?

A. It did. When you came in and signed off the articles,

1049 and if you are wanted back on the ship, you are told so, but as far as the articles hold you or the company hold you, they have no right to.

Q. I will ask you whether or not employment of seamen in that respect is not peculiar and different from other employment?

A. Yes, sir; it is.

Q. Isn't it a fact that the employment of seamen is also regulated by the Maritime law to this extent, that he is subject to a penalty to the extent he violates these articles?

A. You are subject to what they call logs, and generally the Commission decides on that.

Q. In other words, you have not the right that an employee usually has to terminate his employment before he finishes his work?

A. That is right, as long as you are on the articles.

Q. In other words, if you wanted to quit, having once signed the shipping articles, you are bound to make that one voyage whether you want to do it or not?

A. Unless in the case of sickness or something like that, or unless it is agreeable with the Consul in the foreign port. If it is agreeable to the American Consul to have you break the articles.

Mr. Hoskins. I move that the entire testimony of this witness be stricken for the reason stated in my objection, and that no further testimony be introduced by Mr. Howard.

1050 Trial Examiner Seagle. The objection is overruled. Are your subsequent witnesses going to testify to the same effect?

Mr. Howard. Yes.

Trial Examiner Seagle. Would there be any objection to stipulating that the other witnesses would testify to the same effect?

Mr. Hoskins. No, but I wish to reserve my right to cross-examine this witness.

Trial Examiner Seagle. I understood you to say that you did not want to cross-examine.

Mr. Hoskins. No; I didn't say that.

Cross-examination by Mr. Hoskins:

Q. Mr. Sweeney, at the times you were going to sea have you ever reshipped on the same boat?

A. Yes, sir.

Q. You did not go back to the Union Hall and place your name on the rotation list?

A. No, sir; I didn't have to.

Q. This question of logging, I believe you were asked a question if the seaman was not subject to criminal statutes and fine and imprisonment and several other things if he deserted, and you answered he was subject to be logged. That is a thing different from being subject to fine and imprisonment; it means he loses his pay?

A. He loses not necessarily his pay, but you are subject to

1051 the Captain's logging.

Q. What do you mean by logging?

A. Well, he fines you.

Q. He fines you the amount you have due on your pay?

A. Yes, sir.

Q. You have never known of a case where he fined a man more than was due on his pay?

A. He could not fine him more than he would have coming.

Q. There are no criminal laws whereby that man can be fined and confined to the penitentiary, or anything like that?

A. No, sir.

Mr. Howard. Mr. Examiner, do you wish me to state who the other witnesses are?

Mr. Hoskins. I will stipulate their testimony.

Trial Examiner Seagle. Do you wish to cross examine?

Mr. Hoskins. No, I will waive cross-examination.

Mr. Howard. May I state, in that connection, how long they have followed the sea?

Trial Examiner Seagle. Well, it doesn't make much difference.

It is stipulated that O. N. Brooks, and Oscar Stephens, if called, will testify to the same effect as the witness who just left the stand.

Do you so stipulate, Mr. Hoskins?

Mr. HOSKINS. I do stipulate.

Trial Examiner SEAGLE. Do you wish to stipulate it, Judge
1052 Howard?

Mr. HOWARD. I do.

Trial Examiner SEAGLE. Have you any further witnesses?

Mr. HOWARD. I have no further witnesses.

Trial Examiner SEAGLE. Do you rest your case?

Mr. HOWARD. Yes, sir.

E. J. PELLETIER, having been previously sworn, was recalled and testified further as follows:

Direct examination by Mr. HOSKINS:

Q. Mr. Pelletier, were in the room when Mr. Fagan testified?

A. No, sir; not all the time he testified, just at the last part of the testimony.

Q. Mr. Fagan made some statement concerning a question that came up before the "Bienville" sailed on the last trip, the trip on which you were the chief steward. He made some statement that a question came up with reference to a mess boy, and I will ask you to state in your own words what transpired with reference to the putting on of an additional mess boy or mess man?

A. Well, on the last voyage, we had two mess boys for the sailors.

Q. Let us get this straight. I think, possibly for the purpose of clarity, we should refer to the voyages as voyage num-
1053 ber one and voyage number two of the "Bienville," meaning by that that voyage number two was the last voyage or the final voyage on the "Bienville," and voyage number one being the voyage immediately preceding it. Will you keep that in your mind?

A. Yes, sir. Can I refer to the first voyage?

Q. Yes, refer back just as far as it is necessary.

A. As I was promoted from chief cook to chief steward, and knowing that I had two mess boys for the sailors and one mess man for the officers, and a pantry man and two cooks on the first voyage, and then knowing that I was to have nine passengers, and the union regulations call for one boy or man for every seven passengers, I asked Mr. Fagan for this extra man.

Q. When did you ask Mr. Fagan for this extra man?

A. Before I signed on.

Q. That is on the second voyage?

A. On the second voyage.

Q. In other words, it was in the time period just shortly before you sailed in May, isn't that correct?

A. Yes, sir.

Q. Go ahead.

A. It was on the fourth of May, or the fifth of May, I signed on the fifth, about, May, and it was in the morning of the fifth of May when they were signed and the articles was dated back on the fourth of May.

Q. On your preceding trip, trip number one of the "Bien-
1054 ville," did you have any passengers on board?

A. No.

Q. You had no passengers on board at all?

A. No; we had no passengers whatever.

Q. And you said you were to have nine passengers on trip number two?

A. Yes, sir.

Q. When did you first learn that you were to have those nine passengers?

A. On the morning of the fifth.

Q. The same morning you approached Mr. Fagan?

A. Yes, sir.

Q. And as I understand you said that you had the same crew in numbers that you had on trip number one?

A. Yes, sir; and I asked him, when I mentioned the extra mess man, he said "Take one of your boys from down below," he said "Put him up on the top side to take care of the passengers."

Q. Will you explain what you mean by taking one from down below and putting him up on the top side?

A. Well, to transfer one mess boy up to the salon service.

Q. That is one of the mess boys who would ordinarily wait on the crew?

A. Yes.

Q. How many mess boys did you have on your first trip to wait on the crew?

1055 A. Two.

Q. And if you carried that out you would only have one to wait on the crew?

A. I did carry it out, and that left one man to wait on the crew.

Q. That left you one man short in your crew section?

A. Yes, sir.

Q. Go ahead.

A. So, I spoke of that in front of Mr. Scotty Ross, the union agent, and Mr. George Ernst, they were there present.

Q. Who was the second man you mentioned, George Ernst?

A. Yes.

Q. Who is he?

A. He is the delegate for the International Seaman's Union.

Q. For the steward's division?

A. No; I think it is the engine division, but he was representing the steward's division. Both of them were representing the steward's division at that time.

Q. Did they understand at that time too, at the time you had this conversation with Mr. Fagan, Mr. Ernst and Mr. Ross were present?

A. Yes, representing all branches; so, he said—I told Mr. Ross about it, so he said "Well, we have to have two men down below there, and if we do not get them," he said, "The crew is going to kick."

1056 Q. Who said that?

A. I said it, and he said, "The man that you have there is willing to do that work."

Q. Who said that now?

A. Mr. Ross and Mr. Fagan, and they had called him in and asked this man would he do the work, and he said he had only been a short time going to sea, and consented to that job, that he would do the work. Mr. Fagan asked me then was it all right, will I accept to go to sea in that way, in that condition, and I told him it was entirely up to my union representatives, and I knew from what was going around the Waterman Line at that time regarding stewards, that if I had rejected, he would have replaced me, because I had not already signed on.

Q. You had not signed on at the time this conversation took place?

A. No, sir; we signed on later that day.

Q. Then what happened next?

A. Well, we went down and signed on around five o'clock, sometime in the afternoon, I mean, about two o'clock, and the passengers started coming in and the passengers and everybody and everything, were coming aboard, and I remember that I started to prepare to have supper for them, and while during the supper I first noticed,

1057 it came to me that the sailors and the firemen, the crew, started kicking about the service they were getting from this one mess boy, and while I could not go down——

Q. What would you say was the nature of their complaints there?

A. They were not getting their service; they had to wait too long to get something to eat.

Q. Is that a situation that could have been remedied by two mess boys being on, as theretofore?

A. Yes, sir.

Q. Let me clear up one more point. The boat, had it sailed or was it at the dock?

A. At the dock.

Q. Go ahead.

A. So, I understood they held a meeting there in the messroom, that they would not sail the ship unless they got this mess boy.

Q. Were you present at that meeting?

A. No, sir.

Q. Did you know it was going to be called or held?

A. No, sir.

Q. All right.

A. When the ship was delayed, and I got the passengers asking why the ship was delayed up you see, and that was the way I found out that the sailors held a meeting, that they were wanting to quit unless they got another mess boy, and then Mr. Ingram
1058 was in the conversation with them and adjusted it; he promised them if they took the ship out that they would replace a new mess boy on at Tampa.

Q. Who is Mr. Ingram?

A. Mr. Ingram is the assistant port engineer.

Q. He is the gentleman who testified at this hearing?

A. Yes, sir.

Q. He promised the crew that if they would go ahead and take the boat out he would see that another mess boy was put on at Tampa?

A. Yes, sir.

Q. Go ahead.

A. Then, we sailed that evening and when we got to Tampa we acquired the new mess boy.

Q. After your conversation in the afternoon, Mr. Fagan, and Mr. Ross, and Mr. Ernst; did you approach any officer of the company and ask for a mess boy?

A. No, sir; not after that.

Q. Did you wait until an hour before, or did you an hour before the sailing of the vessel, go to see anybody on the deck about a mess boy?

A. No, sir.

Q. Any action that was done, was taken by the delegate or Mr. Ingram?

A. By Mr. Ingram. I could say also, that at the meeting,
1059 our union representatives that was on the ship; it was in his jurisdiction to see that I was to have that mess boy, but he was not protecting me; I did not see at that time that he was protecting me, and I signed the articles because I wanted to have the ship.

Q. But you did make a request early in the afternoon for another mess boy?

A. Not after that conversation.

Q. After the conversation you had?

A. After I was signed on, I did not.

Q. Is the S. S. "Azalea City" a sister ship of the "Bienville"?

A. Yes, sir.

Q. Do you know whether or not one or two mess boys are on that ship for that crew?

A. They have the same complement as we do on the "Bienville."

Q. For which trip of the "Bienville"?

A. The second trip.

Q. Then they do have two mess boys for the crew?

A. Yes.

Q. And one for the passengers?

A. One for the officers and a pantry man and two cooks and a steward.

Trial Examiner SEAGLE. Any questions?

Mr. MCCORVEY. No questions.

Trial Examiner SEAGLE. The witness is excused.

1060 (Witness excused.)

Trial Examiner SEAGLE. The taking of the testimony is now completed. Are there any requests?

Respondent's motion to dismiss

Mr. MCCORVEY. Yes, sir; I have a motion. As I understand the rules of procedure, Rule Fourteen provides that all motions made at the hearing must be oral and included in the stenographic report, and I would like to make this motion on behalf of the Waterman Steamship Corporation.

Now, comes the Waterman Steamship Corporation, the respondent in the above styled cause, and all the evidence having been introduced and all parties having rested and the evidence showing without dispute that the Waterman Steamship Corporation, under its contract with the International Seamen's Union of America, an affiliate of the American Federation of Labor, has employed on its ships members of the said International Seamen's Union of America, and the record further disclosing without controversy that the Waterman Steamship Corporation, during the existence of its contract with the said International Seamen's Union of America, has never been delayed in any manner whatsoever in the sailing of any of its large fleet of vessels, and the National Labor Relations Act, under which this proceeding is instituted, being termed "An Act to diminish the causes of labor disputes burdening or obstructing interstate or foreign commerce, etc.,"

and it now appearing conclusively from the evidence that

1061 neither interstate nor foreign commerce has ever been in any manner burdened or obstructed by the action of the Waterman Steamship Corporation, the respondent, now complained of, the said Waterman Steamship Corporation now moves that the complaint as last amended filed against it in this proceeding be dismissed on the following separate and several grounds:

1. For that the evidence fails to show that the respondent has been guilty of any violation of the National Labor Relations Act.

2. For that the evidence fails to show that the respondent has been guilty of any unfair labor practices as defined in the National Labor Relations Act.

3. For that the evidence fails to show that the respondent has interfered with, restrained, or coerced employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

4. For that the evidence fails to show that the respondent has by

discrimination in regard to hire or tenure of employment or any term or condition of employment encouraged or discouraged membership in any labor organization.

5. For that the evidence shows that the respondent, at all times mentioned in the complaint, was bound by a contract recognized as valid by the National Labor Relations Act to give preference of employment to members of the International Seamen's Union.

1062 6. For that the evidence shows that the refusal of the respondent to grant passes on board its ships to organizers of the National Maritime Union did not have the effect of interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

Trial Examiner SEAGLE. The motion is denied as to all of the grounds stated.

Mr. MCCORVEY. And we reserve exceptions separately and severally to each ground.

Trial Examiner SEAGLE. That is right.

Intervenor's motion to discuss

Mr. HOWARD. Comes the Intervenor, the Seamen's Reorganization Committee of the American Federation of Labor, as Successor to the rights of the International Seamen's Union under the contract offered in evidence and which the evidence shows has been performed in part by the Waterman Steamship Corporation and your Intervenor herein, and shows unto Your Honorable Board that it affirmatively appears from the evidence taken in this cause, that for your Honorable Board to take any action, the result of which would be to in anywise interfere with, obstruct, or impede either party to its rights thereunder would be contrary to the spirit and purpose of the Act of Congress called the Wagner Act, under which Your Honorable Board is organized and acting, that under no provision of said Act is Your

1063 Honorable Board permitted to impair the obligation of an existing contract under which the rights of Your Intervenor have been fairly and legally established and under which the said International Seamen's Union has been established by the evidence, without dispute, to have been such a bargaining agency as is provided for by said Act;

Wherefore Your Intervenor moves that this matter be dismissed as beyond the jurisdiction of Your Honorable Board.

Trial Examiner SEAGLE. The motion is denied.

Mr. HOWARD. Mr. Examiner, I accept.

Motions to conform pleadings to the proof

Mr. HOSKINS. Mr. Examiner, I move to conform the pleadings to the proof.

Trial Examiner SEAGLE. A motion has been made to conform the pleadings to the proof. Is there any objection to that motion?

I may say all parties have the benefit of a similar motion.

Mr. MCCORVEY. We all make the same motion, then. It is new practice to me.

Trial Examiner SEAGLE. All parties will be deemed to have made that motion and the motion will be granted.

Mr. MCCORVEY. As to all parties?

Trial Examiner SEAGLE. Yes.

The hearing is adjourned.

(Whereupon, at 4:20 o'clock p. m., November 5, 1937, the hearing in the above-entitled matter was closed.)

1064 In United States Circuit Court of Appeals for the Fifth Circuit

[Title omitted.]

[File endorsement omitted.]

Answer of the National Labor Relations Board to petition for review and request for enforcement of an order of the National Labor Relations Board

Filed August 5, 1938

To the Honorable, THE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Comes now the National Labor Relations Board, hereinafter referred to as the Board, by J. Warren Madden as Chairman and member of said Board, and Edwin S. Smith and Donald Wakefield Smith as members thereof, and pursuant to the provisions of the National Labor Relations Act (49 Stat. 449, c. 372, 29 U. S. C. Sec. 151, et seq.), files this answer and request for enforcement of an order of the Board.

1. The Board admits the allegations contained in Part 1, captioned "Jurisdiction," of the petition for review.

2. Answering the allegations contained in Part 2, captioned "Statement of Proceedings," of the petition for review, the Board:

1065 (a) Admits the matter set forth on pages 3–13, inclusive, thereof, but denies that such constitutes a full, accurate, and complete description of the allegations and averments in the charge, amended charge, complaint, amended complaint, amendments to the complaint, answer to the amended complaint, amendments to the answer to the amended complaint, and petition for intervention, and for a full, accurate, and complete description thereof, the Board prays reference to the record in said proceedings certified to and filed with this Court;

(b) Admits, as set forth in the first unnumbered paragraph on page 14 thereof, that hearings were held before the Trial Examiner and that rulings were made by him; but denies that the Trial Examiner committed any prejudicial error in making such rulings;

(c) Admits the presentation of the motion and the ruling of the Trial Examiner as set forth on the remainder of page 14 and on page 15 down to and including the last full paragraph thereon;

(d) Denies that the allegations in the unnumbered paragraphs on the balance of page 15, on page 16, and down to and including the second full paragraph on page 17, constitute a full, accurate, and complete description of the proceedings therein referred to, and for a full, accurate, and complete description thereof, the Board prays reference to the record in such proceedings certified to and filed with this Court;

(e) Denies that the allegations of the next full unnumbered paragraph, the same commencing on page 17 and continuing onto page 18, constitute grounds for injunctive or other relief from any or all the requirements of the Board's order against petitioner;

(f) Neither admits nor denies the allegations of the next full paragraph, being the only full paragraph on page 18, and avers that they are irrelevent and immaterial to the issues before this Court;

1066 (g) Neither admits nor denies the allegations contained in the next two unnumbered paragraphs, being those commencing with the last four lines on page 18 and conttinuing through all of page 19, but avers that such allegations are irrelevant and immaterial to the issues before this Court, and seek to raise questions into which this Court will not inquire.

3. Answering the allegations contained in Part 3, captioned "Assignments of Error," the Board:

(a) Denies each and every allegation contained in assignments numbered 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, and 62 thereof; except that, as to any of the aforesaid allegations, and particularly but without limitation assignments numbered 19, 25, 26, and 27, which purport to characterize or interpret the findings and order of the Board, or which allege conclusions of law based upon such characterizations or interpretations, the Board neither admits nor denies such allegations but prays reference to the exact findings and order of the Board as certified and filed with this Court.

(b) Neither admits nor denies the allegations contained in assignment numbered 5 thereof, but avers that such allegations are irrelevant and immaterial to the issues before this Honorable Court and seek to raise questions into which this Court will not inquire;

(c) Without admitting the legality of the contract referred to in assignment numbered 63, denies that it failed to take

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1067 into consideration the provisions of said contract as alleged in said assignment.

Wherefore, having answered each and every allegation in the petition for review, the Board prays this Honorable Court that the said petition be denied, including each and every prayer in Part 4, captioned "Prayer," except prayers numbered 1 and 2 thereof.

Further answering, the Board, pursuant to the authority conferred upon it by the provisions of the National Labor Relations Act, respectfully requests that this Honorable Court enforce the order issued by the Board in the proceedings instituted against the petitioner, said proceedings being known upon the record of the Board as Case No. C-375, the title thereof being, "In the Matter of Waterman Steamship Corporation and National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama."

In support of its request for enforcement of said order, the Board alleges:

(a) Petitioner is, and at all times herein mentioned, was, and has been since June 10, 1919, a corporation organized under and existing by virtue of the laws of the State of Alabama; having its principal office and place of business in the city of Mobile, County of Mobile, and State of Alabama, where the unfair labor practices involved in these proceedings occurred;

(b) By reason of the provisions of Section 10 (f) of the National Labor Relations Act, and the matter alleged in paragraph (a), supra, this Court has jurisdiction of the petition for review herein and of this request for enforcement;

1068 (c) On the 9th day of October 1937, there having theretofore been duly filed with the Board an original charge signed by the National Maritime Union, by K. K. Owen, Mobile, Agent, National Maritime Union, Engine Division, the Board, by its Regional Director for the Fifteenth Region, duly issued its complaint in said proceedings, No. C-375, alleging that petitioner had engaged and was engaging in certain unfair labor practices affecting commerce, within the meaning of the National Labor Relations Act, which complaint, together with a notice of hearing thereon, was duly served upon the petitioner. Thereafter, having received amended charges, signed by the National Maritime Union, by J. L. Cook, representative pro tem, the Board on the 20th day of October 1937, by its Regional Director for the Fifteenth Region, duly issued its amended complaint in said proceeding, which amended complaint, together with a notice of hearing thereon was duly served upon the petitioner. Thereafter, on or about the 26th day of October 1937, petitioner filed an answer to the amended complaint and, pursuant to proper request, subsequently amended said answer;

(d) Thereafter, on the 1st, 2nd, 3rd, 4th, and 5th days of November 1937, the Board, by William Seagle, its duly designated Trial

Examiner, after due notice, held a hearing in said proceedings at Mobile, Alabama. At the commencement of the hearing the Seamen's Reorganization Committee of the American Federation of Labor, as the successor to the International Seamen's Union of America, moved to intervene, which motion was granted by the Trial Examiner with intervention restricted to the issues raised by existence of a contract between petitioner and the International Seamen's Union of America. At said hearing, testimony and other evidence with respect to the allegations stated in the said amended complaint were adduced by the Board, by petitioner and by intervenor;

1069 (e) Thereafter, on or about the 17th day of January 1938, the Trial Examiner filed with the Board an Intermediate Report containing his findings of fact and conclusions of law, to which Intermediate Report petitioner and intervenor, in accordance with the rules and regulations of the Board, each duly excepted.

(f) Thereafter, on the 8th day of March 1938, at the request of petitioner, oral argument was had before the Board in Washington, D. C. Petitioner was represented by counsel who participated in the oral argument and submitted a brief in support of petitioner's exceptions to the Intermediate Report;

(g) Thereafter, on the 18th day of May 1938, the Board, having duly considered the matter, including the record made in the proceeding conducted by the Trial Examiner, the stenographic report of the hearing and the evidence, both oral and documentary, offered and received at the hearing, and the argument and brief presented by counsel for petitioner at the oral argument before the Board, and being sufficiently advised in the premises, and being of the opinion upon all the testimony and evidence that petitioner had been and was then engaged in certain unfair labor practices affecting commerce within the meaning of the National Labor Relations Act, duly stated its findings of fact, conclusions of law, and issued and entered the following order, directed to the petitioner, its officers, agents, successors, and assigns:

ORDER

Upon the basis of the above findings of fact and conclusions of law and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Waterman Steamship Corporation, Mobile, Alabama, and its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From refusing to issue passes to authorized representatives of the National Maritime Union of America in equal numbers and under the same conditions as it grants passes to representatives of the International Seamen's Union of America or its successor.

1070 (b) From discouraging membership in National Maritime Union of America, Marine Engineers Beneficial Association, or any other labor organization of its employees, by laying off, discharging, or refusing to reinstate any of its employees, or in any manner discriminating in regard to their hire or tenure of employment or any terms or conditions of their employment;

(c) From in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Grant passes to authorized representatives of the National Maritime Union of America in equal numbers and under the same conditions as it grants passes to representatives of the International Seamen's Union of America or its successor;

(b) Offer to the persons listed in Appendices A and B and to C. J. O'Connor immediate and full reinstatement to their former positions, without prejudice to their seniority, and other rights and privileges;

(c) Make whole the persons listed in Appendices A and B and C. J. O'Connor for any loss of pay they have suffered by the respondent's discriminatory acts, by payment to each of them of a sum of money equal to that which each would normally have earned as wages—including therein the reasonable value of his maintenance on shipboard from the time that the ship he was employed on sailed again after his discharge or lay-off—during the period from the date of such discrimination against each of them to the date of the offer of reinstatement, less any amount each has earned during that period;

(d) Post immediately notices to its employees in conspicuous places on its docks and on its vessels, and maintain such notices for a period of at least thirty (30) consecutive days from the date of posting, stating that the respondent will cease and desist in the manner aforesaid;

(e) Notify the Regional Director for the Fifteenth Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.

1071

APPENDIX A

Basil Brown [1]	Edmund J. Pelletier [1]
M. J. Burgess	W. Reynolds
James Gilroy [1]	William Rodner [1]
Kenneth E. Graham [1]	R. F. Schuettner [1]
J. P. Hamilton [1]	C. W. (Jerry) Turner
Wesley Howard	Earl Wilkerson [1]
B. H. Ingram	C. W. Wilson
James M. Jeffries [1]	Dudley Beuk [1]
Marlyn E. Jones [1]	Herman Zilberman [1]
A. C. King	R. Reynolds
Herman Lee [1]	F. Gordy [1]
Archie McWiggen [2]	—— Lopez [1]
J. B. Morrow [1]	Lewis Jones [3]

APPENDIX B

Columbus Anderson	Raymond S. Kettewell [4]
Andrew Benron [4]	Otto K. Ortleb
Fulbert A. Bodden [4]	Charles Perkins
Howard Bowen [4]	Edward X Rhone [4]
Eric Bucher	Jessie J. Scott
Robert Crawford [4]	C. E. Smith [4]
James Dobbs [4]	James C. Steward
W. Gold [4]	Bennett Bapiste [4]
Herbert Hall [4]	

(h) The said order was duly served upon petitioner and intervenor, and is, and all all times since its issuance and service, has been in full force and effect;

(i) Thereafter petitioner, in accordance with the provisions of subsection (e) of paragraph 2 of said order, notified the Board's Regional Director for the Fifteenth Region, in writing, that it
1072 felt aggrieved by the final order of the Board, and as provided for in subsection (f) of Section 10 of the Act, would seek a review of said order in the Circuit Court of Appeals of the United States;

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[1] Spelled in the shipping articles as B. H. Brown, J. E. Gilroy, Kenneth Graham, J. B. Hamilston, J. M. Jefferies, M. E. Jones, H. E. Lee, Jos. B. Monow, E. J. Pelletier, Wm. Rodin, Richard Schuettner, E. Wilkerson, D. H. Benk, H. Zilberman, Fred Gordy, Pedro G. Lopez.

[2] Listed in complaint as Bosun on the "Bienville"; name does not appear in shipping articles, but name of A. McGregor, Bosun; does appear there. Evidently the same individual.

[3] Name does not appear on shipping articles; listed in complaint as member of crew of "Fairland," but appears on respondent's Exhibit No. 21 as member of crew of "Bienville"; since motion to conform the pleadings to the proof was granted as to all parties we have included Lewis Jones in the crew of the "Bienville."

[4] Spelled in the shipping articles as Andrew Benion, F. Bodden, H. Bowen, R. Crawford, M. James Dobbs, W. R. Gold, H. Hall, R. S. Kettlewell, E. X. Rhone, Claude Smith, Bennette Baptiste.

(j) The Board, pursuant to Section 10 (f) of the National Labor Relations Act, is certifying and filing with this Court a transcript of the entire record of the proceedings before the Board, including the pleadings, testimony and evidence, Intermediate Report, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays that this Honorable Court, pursuant to Section 10 (f) of the National Labor Relations Act, take jurisdiction of the proceedings and of the questions determined therein, and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in such transcript, and upon the order of the Board made thereupon and dated May 18, 1938, a decree denying in whole petitioner's prayer for relief, and enforcing in whole the said order of the Board, and requiring petitioner, its officers, agents, successors, and assigns to comply therewith.

Dated at Washington, D. C., this 30th day of July 1938.

J WARREN MADDEN, *Chairman,*
EDWIN S. SMITH, *Member,*
DONALD WAKEFIELD SMITH, *Member,*
National Labor Relations Board.

[SEAL]

(S) CHARLES FAHY,
General Counsel.

1073 *Duly sworn to by J. Warren Madden et al.; jurat omitted in printing.*

1074 In United States Circuit Court of Appeals, Fifth Circuit

[Title omitted.]
[File endorsement omitted.]

Petition of National Maritime Union of America to intervene

Filed November 15, 1938

STATE OF NEW YORK,
County of New York, Southern District of New York, ss:

William L. Standard, being duly sworn, deposes and says: I am the attorney for the National Maritime Union of America, a labor union on whose complaint the proceedings sought to be reviewed herein was initiated by the National Labor Relations Board.

Max Lustig, Esq., an attorney associated with me, participated as my representative in the hearings conducted by the National Labor Relations Board, and argued the case before the National Labor Relations Board, which resulted in the order of the Board sought to be reviewed in this Court.

While the nominal parties to this proceeding are the National Labor Relations Board and the Companies which filed the petition for re-

view, the real party in interest is not the National Labor Rela-
1075 tions Board, which is merely a public functionary with no interest one way or the other, but the Union which I represent—the dispute herein determined exists between the Union which I represent, and the Petitioners in this proceeding.

I therefore respectfully pray that my client, the National Maritime Union of America, be permitted to intervene in this proceeding, and that I be permitted to argue and file a brief on its behalf on the final argument of this case on the merits, before this Honorable Court.

WILLIAM L. STANDARD.

Sworn to before me this 2nd day of November 1938.

Abraham Weisberg;
ABRAHAM WEISBERG,
Notary public, Kings County.

1076 In United States Circuit Court of Appeals

[Title omitted.]

Minute entry of argument and submission

February 23rd 1939

On this day this cause was called, and, after argument by Gessner T. McCorvey, Esq., and C. A. L. Johnstone, Jr., Esq., for petitioner, and A. Norman Somers, Esq., Attorney, National Labor Relations Board, for respondent, and William L. Standard, Esq., for National Maritime Union of America, Intervenor, was submitted to the Court.

1077 In United States Circuit Court of Appeals
For the Fifth Circuit

No. 8841

WATERMAN STEAMSHIP CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL., RESPONDENTS

Petition for Review of Order of the National Labor Relations Board, sitting at Washington, D. C.

(April 11, 1939)

Before FOSTER, SIBLEY, and MCCORD, Circuit Judges.

Opinion of the court

Filed April 11, 1939

MCCORD, Circuit Judge: Waterman Steamship Corporation owns and operates a fleet of vessels and is engaged in interstate and foreign commerce. It is an Alabama corporation with headquarters in Mobile.

The Waterman Corporation was under contract and employed the unlicensed personnel of its crews from the membership of the International Seamen's Union of America, an affiliate of the American Federation of Labor. Section 1 of the contract provided, "It is understood and agreed that as vacancies occur, members of the International
1078 Seamen's Union of America, who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the respective positions: provided, however, that this Section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt reshipment, or absence due to illness or accident."

Two of the vessels of the Waterman Steamship Corporation, the S. S. "Fairland" and the S. S. "Bienville," were returning to Mobile from voyage. On July 1, 1937, they arrived at Tampa, Florida, and the majority of the members of the crews of these two vessels, under the guidance of an organizer, changed their membership from the International Seamen's Union of America to the National Maritime Union of America, and affiliate of the Committee for Industrial Organization.

The ships proceeded from Tampa to Mobile. When the "Bienville" reached Mobile it was laid up for extensive repairs; its crew was discharged, and the members paid and signed off before the United States Shipping Commissioner. When the "Fairland" reached Mobile it went immediately on drydock and the crew was likewise paid, discharged, and signed off. The "Bienville" was laid up for repairs from July 5th to August 1st. The "Fairland" was in drydock for thirty hours and for seven days was laid up for repairs.

When these ships were ready to sail again and crews were to be signed on, the Waterman Steamship Corporation, under its existing contract with the International Seamen's Union of America, employed only members of that union. The members of the old crews being members of the National Maritime Union of America, were not reemployed.

A complaint alleging unfair labor practices was filed against
1079 the Waterman Steamship Corporation and after a long and exhaustive hearing, the National Labor Relations Board found that the corporation had laid off and refused to reinstate forty-three members of the crews of the S. S. "Fairland" and S. S. "Bienville" for the reason that the said employees had joined and assisted the National Maritime Union of America, an affiliate of the Committee for Industrial Organization; that C. J. O'Connor, second assistant engineer on the S. S. "Azalea City," had been discharged and refused reinstatement because of his participation in a collective protest and for holding membership in the Marine Engineers' Beneficial Association, also an affiliate of the Committee for Industrial Organization; and that the Waterman Steamship Corporation in denying passes to delegates of the National Maritime Union of America to go upon the ships of the company to solicit members had discriminated against this union and in favor of the International Seamen's Union of America.

The Board thereupon entered its order on May 18, 1938, commanding the company to cease and desist and post notices, and to offer reinstatement to the employees who had been discharged and that without prejudice to seniority and with back pay and reasonable value of maintenance on shipboard for the time they had been laid off. The company was further ordered to grant passes to the representatives of the National Maritime Union of America in equal numbers and under the same conditions as it issued passes to the International Seamen's Union of America.

The Waterman Steamship Corporation brings this appeal and seeks to vacate the order of the National Labor Relations Board entered on May 18, 1938. In this proceeding National Maritime Union of America has intervened on behalf of the Board, and Seamen's Reorganization Committee, successor to the International Seamen's Union of America, has intervened on behalf of the Waterman Steamship Corporation.

1080 A careful reading of the evidence discloses that the Waterman Steamship Corporation has been dealing fairly with the labor unions. Where a majority of its employees in a particular class were members of a union it contracted to employ men who belonged to that union regardless of the union's affiliation. It has not organized a company union, sponsored any certain union, or discharged its employees for union activity or affiliation. It entered into contract and gave preference of employment to members of the International Seamen's Union of America for the reason that its members were in the majority. We have heretofore held such employment contracts to be valid. Peninsular & Occidental S. S. Co. v. National Labor Relations Board, 98 F. (2d) 411.

The evidence is virtually without dispute that repairs on the S. S. "Bienville" and S. S. "Fairland" had been planned by the company long before the crews changed their membership from one union to another. When the ships were laid up for repairs it was only for reasons of economy, we think, that the crews were discharged. There was no effort on the part of the company to make war on the unions. The evidence does not even point in that direction. Some of the members of the crews were employed in the shops while the ships were laid up. The Waterman Corporation's engineers were members of the Marine Engineers Beneficial Association, an affiliate of the Committee for Industrial Organization, and they were members and so belonged before these vessels went to sea. No effort was made to discharge them, and we may conclude that all of them, except O'Connor of the S. S. "Azalea City," are yet working for the company. The finding of the Board that the ships were laid up as an excuse to get rid of the men is based on suspicion and not on the evidence.

1081 When the time came to employ crews for the "Bienville" and "Fairland" after they had been repaired, the company was bound under its contract to select its unlicensed employees from the membership of the International Seamen's Union of America. The

Board by its order would penalize the company for keeping this contract.

The Waterman Corporation admits that it refused to issue passes to representatives of either of the unions to come aboard its vessels to organize and recruit members. The attitude of the company is clearly shown by an order addressed to the Masters of all the vessels. It bore date of July 13, 1937: "To All Masters:—In view of the fact that the National Labor Relations Board are now holding elections to determine whether the N. M. U. or the I. S. U. should represent the unlicensed members of our crews in collective bargaining, we have decided that we will not allow any delegates from either union to board our vessels for the purpose of soliciting memberships. N. Nicholson, Executive Vice-president."

Under the provisions of the contract representatives of the International Seamen's Union of America were granted passes to go aboard the vessels to collect dues from its members. The National Maritime Union of America had no such contract. Both unions were alike denied passes to solicit members.

The trouble was not of the making of the Waterman Steamship Corporation. It emanated from a fight between the unions and nothing more. As they fought to oust each other the Waterman Steamship Corporation became the victim. One may conclude from the evidence that if the union representatives were permitted to go aboard the ships to organize and recruit members, business and shipping in all probability would be shunted aside while the rival unions staged a battle for supremacy. The company was within its right
1082 when it forbade the representatives of the unions to come aboard its vessels for the purpose of soliciting memberships. It played no favorite and the Board erred in its order in this respect. In re American France Line, et al., and International Seamen's Union of America, Vol. 3, Decisions and Orders of the National Labor Relations Board, 64, 78–79.

The National Labor Relations Board has wide discretion in administering the National Labor Relations Act, but in so doing it must deal fairly with all the parties. It has the duty to decide the case before it on all the evidence and should not arbitrarily cast away all the undisputed evidence that is inconsistent with its findings. If its findings are supported by substantial evidence they should stand. The test of substantial evidence, however, is not satisfied by evidence which merely creates a suspicion. Appalachian Electric P. Co. v. National Labor Relations Board, 93 F. (2d) 985; Peninsular & Occidental S. S. Co. v. National Labor Relations Board, 98 F. (2d) 411.

The special finding of the Board as to Edmund J. Pelletier, Steward of the "Bienville," is not supported by the evidence. It is without dispute that the Captain of the "Bienville" had written from a foreign port to the Port Captain at Mobile complaining of the way in which Pelletier was running his department aboard ship.

e company had the right to discharge him for cause. All em-
yers have wide latitude in employing and discharging employees.
e only requirement of the National Labor Relations Act is that
employee must not be discharged on account of union activities
l union affiliations. National Labor Relations Board v. Jones &
ughlin Steel Corp., 301 U. S. 1, 45; Associated Press v. National
bor Relations Board, 301 U. S. 103, 132; National Labor Relations
ard v. Union Pacific Stages, 99 F. (2d) 153.

The evidence shows that there is no merit in the Board's
3 finding that C. J. O'Connor, second assistant engineer on the
S. S. "Azalea City," was discharged for his participation in a
lective protest and for holding membership in the Marine En-
eers' Beneficial Association. O'Connor was not discharged. The
rt Captain did not discharge him but directed him to take a vaca-
n when he arrived in Mobile. This he did. The evidence tends to
w that O'Connor was in the habit of taking voluntary vacations
frequent intervals. He has never returned and formally made
uest to be placed on active duty. He is entitled to pay for the
nber of days the company allows and grants for vacation to its
ployees in his class. Upon application he is also entitled, if he
satisfactorily qualify, to be offered reinstatement to his former
ition.

t results that the petition of the Waterman Steamship Corporation
granted and the order of the National Labor Relations Board is
ated except as modified and approved as to C. J. O'Connor.
dgment will be entered accordingly.

Reversed.

A True copy:
Teste:

_____,
Clerk of the United States Circuit Court
of Appeals for the Fifth Circuit.

4 In United States Circuit Court of Appeals for the
Fifth Circuit

No. 8841

WATERMAN STEAMSHIP CORPORATION

vs.

NATIONAL LABOR RELATIONS BOARD ET AL.

Judgment

April 11, 1939

This cause came on to be heard on the petition of the Waterman
eamship Corporation for a review of the order of the National
bor Relations Board entered on May 18, 1938, "In the Matter of

Waterman Steamship Corporation and National Maritime Union of America, Engine Division, Mobile Branch, Mobile, Alabama" (Case No. C–375), and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged, and decreed by this Court, that the petition of the said Waterman Steamship Corporation be, and the same is hereby, granted; and that the order of the said National Labor Relations Board be vacated except as modified and approved as follows: C. J. O'Connor is entitled to pay for the number of days the company allows and grants for vacation to its employees in his class. Upon application he is also entitled, if he can satisfactorily qualify, to be offered reinstatement to his former position.

1085 [Clerk's certificate to foregoing transcript omitted in printing.]

U. S. GOVERNMENT PRINTING OFFICE: 1950

Supreme Court of the United States

Order allowing certiorari

Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

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No. 193

In the Supreme Court of the United States

OCTOBER TERM, 1939

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WATERMAN STEAMSHIP CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 193

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WATERMAN STEAMSHIP CORPORATION

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered on April 11, 1939 (R. 541–542), granting the petition of the Waterman Steamship Corporation that the order of the Board issued against it be set aside, except as modified and approved by the court with respect to C. J. O'Connor.

OPINIONS BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 103–119) are reported in 7 N. L. R. B. 237. The opinion

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of the Circuit Court of Appeals (R. 537–541) is reported in 103 F. (2d) 157.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered April 11, 1939. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) and (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether there was substantial evidence to support the Board's findings that respondent discharged and refused to reinstate certain employees because they were members of a particular labor organization or had engaged in concerted activities for the purpose of collective bargaining.

2. Whether there was substantial evidence to support the Board's findings that respondent discriminated between two rival labor organizations in the issuance of passes permitting their representatives to board its ships, thus interfering with the employees' freedom of choice of bargaining representatives.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, U. S. C. Supp. IV, Title 29, Sec. 151 *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * *

SEC. 10.

(c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

(f) * * * the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

STATEMENT

Pursuant to charges and amended charges filed by the National Maritime Union of America, a labor organization hereinafter referred to as the N. M. U., the National Labor Relations Board, on October 9, 1937, issued its complaint and notice of hearing, which were duly served upon respondent (R. 26–29). The complaint, as thereafter amended, alleged, in substance, that respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (3) of the Act (R. 29–32). Respondent duly filed its answer (R 34–43), and a hearing was held from November 1 to November 5, 1937, before a Trial Examiner of the Board (R. 120–530). On January 17, 1938, the Trial Examiner filed an Intermediate Report (R. 45–79) containing his findings and recommendations, to which exceptions were filed by respondent (R. 80–98) and by the International Seamen's Union of America (R. 99–102) (hereinafter referred to as the I. S. U.), a labor organization which had been permitted to intervene in the proceeding (R. 126). On March 8, 1938, respondent, the I. S. U., and the N. M. U. appeared before the Board by counsel and were heard in oral argument (R. 102). On May 18, 1938, the Board issued its findings of fact, conclusions of law,

and order (R. 103–119). The Board's findings may be briefly summarized as follows:[1]

Respondent is engaged in the operation of steamships in interstate and foreign commerce (R. 106). In July 1937 the crews of two of respondent's vessels changed their affiliation from the I. S. U. to the N. M. U. (R. 107–108). Respondent promptly discharged the entire crews because of their membership in the N. M. U., thus violating Section 8 (3) and (1) of the Act (R. 108–114, 117). Respondent likewise violated those sections of the Act by discharging Edmund J. Pelletier because of his membership in the N. M. U. and C. J. O'Connor by reason of his activities in behalf of a labor organization (R. 113–116). The Board further found that respondent violated Section 8 (1) of the Act by discriminating between the I. S. U. and the N. M. U. in the issuance of passes permitting union representatives to board respondent's vessels and that this discrimination interfered with the employees' free choice of collective bargaining representatives, in violation of Section 8 (1) of the Act (R. 106–107, 117).

Accordingly, the Board ordered respondent to cease and desist from the unfair labor practices found, and as affirmative action necessary to effectuate the policies of the Act, required respondent to reinstate the discharged employees with back

[1] The evidence supporting these findings is discussed at pp. 8–17, *infra*.

pay, including the reasonable value of maintenance they would have received had they not been discharged; to grant passes to repreesntatives of the N. M. U. in equal numbers and under the same conditions as to representatives of the I. S. U. or its successor; and to post appropriate notices (R. 116–118).

On June 16, 1938, respondent, pursuant to Section 10 (f) of the Act, filed with the Circuit Court of Appeals for the Fifth Circuit a petition to set aside the foregoing order (R. 1–21). The Board answered, requesting full enforcement of its order (R. 530–536). On April 11, 1939, the court set aside the Board's order except for the provision requiring the reinstatement of C. J. O'Connor, which was modified and enforced (R. 541–542). The court was of the opinion that none of the Board's findings of fact with reference to illegal discrimination was supported by substantial evidence (R. 539–541).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In not holding that the following findings of the Board were supported by substantial evidence and were therefore conclusive under Section 10 (e) and (f) of the Act:

(a) That respondent discharged and refused to reinstate the entire crews of two ships and two other employees, Edmund J. Pelletier and C. J. O'Connor, because of their union affiliation or activ-

ity, in violation of Section 8 (3) and (1) of the Act;

(b) That respondent discriminated between two rival labor organizations in the issuance of passes permitting their representatives to board its ships and thus interfered with the employees' freedom of choice of collective bargaining representatives, in violation of Section 8 (1) of the Act.

2. In setting aside and denying enforcement to the Board's order, except as modified in respect to C. J. O'Connor.

REASONS FOR GRANTING THE WRIT

A. In our opinion the record in the present case contains clear and overwhelming proof of one of the most flagrant instances of mass discrimination against employees in violation of Section 8 (3) of the Act that has yet been encountered under the National Labor Relations Act. Yet the court below, without discussing the evidence in detail, denied enforcement to the Board's order with the observation that "The evidence does not even point in [the] direction" of an illegal motive for the discharges, and that the Board's findings were "based on suspicion and not on the evidence" (R. 539). We submit that the court was clearly in error, and that the Board's findings were supported by the overwhelming weight of the proof. In setting them aside, the court unwarrantably interfered with the Board's functions under the Act. We shall briefly review the evidence on two aspects of the case:

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the illegal discharge of two entire crews for joining the labor organization of their choice, and respondent's discriminatory issuance of passes to board its ships. On each issue, the evidence which supports the Board's findings is "substantial" within the strictest meaning of the term.[2]

1. On or about July 1, 1937, while two of the respondent's vessels, the *Bienville* and the *Fairland*, were in port at Tampa, Florida, the members of both crews withdrew from the I. S. U. and joined the N. M. U. (R. 132–135, 156–157, 211, 224–225). Respondent learned of this change before the ships left Tampa (R. 294, 340).[3]

By a memorandum dated July 1 respondent ordered the *Bienville* back to its home port of Mobile 5 days ahead of schedule, cancelling stops at several intermediate ports for which the ship carried

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[2] We do not discuss the evidence supporting the Board's findings (R. 113-116) that Edmund J. Pelletier and C. J. O'Connor were discharged and refused reinstatement by reason of their union membership or activities. In each case, we submit, the Board's findings are supported by substantial evidence and we have assigned as error the court's denial of enforcement to the pertinent portions of the Board's order (*supra*, pp. 6–7). In the case of O'Connor, although the order was modified and enforced with reference to his reinstatement, the court denied enforcement to the cease and desist provisions and expressly disapproved the Board's finding of illegal discrimination (R. 541–542). This result is inexplicable under the Act (Section 10 (c)).

[3] The crew of the *Bienville* had voted unanimously at a meeting aboard the ship while in Le Havre, France, several days before July 1, to change from the I. S. U. to the N. M. U. (R. 156, 192, 211).

cargo (R. 371–372, 474–475; Bd. Exh. 25).[3a] On the morning after the ship's arrival, respondent's vice president asked one of the crew why the men had changed to the N. M. U. (R. 157–158). On the same day the entire crew was discharged, and the ship was laid up for about 27 days undergoing repairs (R. 161, 201, 323).

Upon the *Fairland's* arrival at Mobile its captain informed the crew that they were no longer needed because they had joined the N. M. U., and respondent's port captain informed a member of the crew that if the men rejoined the I. S. U. they could keep their jobs (R. 225–226). The crew was discharged (R. *ibid.*, 335). After routine inspection (R. 472–473), which was completed in 30 hours, the *Fairland* was kept idle for about 7 days (R. 331, 387). When the *Bienville* and the *Fairland* finally sailed again, both ships were manned with crews belonging to the I. S. U. (R. 293). Respondent had never before discharged all the members of a crew of a ship (R. 353–354, 320–321).

The Board's finding that the mass discharges were caused by the crews' shift to the N. M. U. (R. 114) finds additional support in the evidence of respondent's patent discrimination against the members of the two crews in the allotment of repair work on the *Bienville*. Customarily, respondent employed members of the crew of a laid-up ship in repair work (R. 162, 401–403, 199–200, 202, 227,

[3a] References to exhibits are to the originals thereof on file in the office of the Clerk.

239–241, 246–250). While the *Bienville* was laid up, however, respondent did not use any members of the crews of the *Bienville* and the *Fairland* until the Board's Regional Director requested that they be reinstated pending an election which had been directed by the Board (R. 354–356, 369–370; Resp. Exh. 19).[4] More than 100 men were then already working on the repairs (R. 324, 356; Resp. Exh. 20). Some of the crew members were then taken on (R. 159, 360). One of them was urged by respondent's assistant port engineer to rejoin the I. S. U. and he, together with another, was discharged after warnings to remove their N. M. U. buttons (R. 159–160, 226–227). Shortly thereafter all the remaining crew members were discharged although work remained to be done (R. 159–162, 202–203, 227). Respondent did not even try to explain these eliminations at the hearing.

Respondent attempted to explain the mass discharges of the two crews on the ground that they were occasioned by repairs planned long prior to the change in the crew's affiliation. The court below accepted this explanation as based on "evidence * * * virtually without dispute" (R. 539), and rejected the Board's finding that the lay-ups were but a pretext for the elimination of the N. M. U. crews (R. 110). We think that the defense was dis-

[4] The preferential hiring contract between respondent and the I. S. U., discussed *infra*, pp. 13–14, had no application to this work. It did not in terms apply to the shop work and it is conceded that it did not apply to any jobs other than those as members of the crew (R. 288, 368).

proved by the very witnesses who had previously testified to it.

The *Fairland* was in the water again within 30 hours after its crew had been discharged, but was kept idle for 7 days (R. 331). Respondent's executive vice president testified that no "repairs to speak of" had been made during this period and that the true explanation was a holiday business slack and necessary adjustment of the sailing schedules (R. 387, 367–368). The captain of the *Fairland* gave the same explanation (R. 344). Respondent's assistant port engineer, on the other hand, testified that the ship had undergone extensive repairs (R. 390–392); and the port captain could not recall whether or not its schedule had been adjusted (R. 490–491). The lack of a consistent explanation for the *Fairland's* idleness during this 7-day period, together with the highly suspicious circumstances under which it began (*supra*, p. 9), supported the Board's finding that the lay-up was arranged for the purpose of facilitating discharge of the crew because they joined the N. M. U.

It is equally difficult to understand, in the case of the *Bienville*, the court's reference to "evidence * * * virtually without dispute" (R. 539). Respondent's witnesses gave confused and contradictory accounts of when the repairs were planned. Respondent's vice president testified that steel had been ordered several months previously for the repair of the *Bienville* and that the repairs were planned long prior to the ship's arrival at

Mobile on July 5 (R. 287, 370–371.) However, when confronted with documentary evidence proving that the lay-up had not been contemplated at a time 2 weeks prior to July 5,[5] he retracted his testimony and stated that the steel might have been ordered for a sister ship, the *Azalea City* (R. 371–372). A similar contradiction of his earlier testimony that plans had been made for repairs on the *Bienville* was made by respondent's assistant port engineer (R. 394, 411–412). Further, the executive vice president testified that the schedule in effect on July 1 called for the *Bienville* to arrive at Mobile on July 11 and remain only until July 15, which, of course, allowed insufficient time in port for the repairs which respondent claimed were planned prior to July 1 (R. 371–372).[6] Further, it was never explained why, if a preexisting repair plan were the reason for the discharge of the crews,

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[5] This document, a stipulation entered into by counsel for respondent on June 21, 1937, in an election proceeding before the Board, recited that the *Bienville* would be in various other ports until July 9, and in Mobile only from July 11 to 15 (R. 371). The lay-up in question was from July 5 to the early part of August.

[6] This is the only possible inference from the testimony of respondent's vice president that the *Bienville* arrived at Tampa in accordance with the stipulated schedule and was, at the time of its recall to Mobile, scheduled to reach Mobile July 11 (R. 371–372)—a plan consistent only with respondent's stipulated schedule calling for only a 4-day lay-up at Mobile (*supra*, note 5). This schedule was fully discussed in the testimony of respondent's officers, its authenticity was never denied, and no evidence whatever was adduced to show a subsequent plan for a longer lay-up.

the *Bienville* had been hurriedly called to Mobile on July 5, immediately after the change of union affiliation, even though that recall necessitated the cancellation of stops at several ports for which she carried cargo (R. 371, 475).

The weakness of respondent's explanation, however, does not rest alone on its glaring inconsistencies. Even assuming, contrary to the fact found by the Board, that the lay-ups were *bona fide*, nevertheless there is still no explanation for the evidence of clear discrimination against the N. M. U. men in the allotment of repair work on the *Bienville* (*supra*, pp. 9–10).[7] Nor does the explanation account for the mass discharge of the N. M. U. crews. The evidence is conclusive that lay-ups do not, either under respondent's practice or that of the industry as a whole, occasion mass discharges of the crews. The men are reshipped, even after lay-ups as long as 60 days (R. 246–252, 257–258, 166–167, 193, 197–201, 239–241, 320–321, 353–354). The observation of the court below that the discharges were, in its opinion, for reasons of economy, is simply incomprehensible. There is no support whatever for it in the evidence, nor could

[7] The court below did not refer to the circumstances or duration of the crew's shore work, nor to the clear discrimination against them in such work because they would not leave the N. M. U. The only reference by the court below to this evidence was its statement that "some of the members of the crews were employed in the shops while the ships were laid up" in support of its statement that respondent did not "make war on the unions" (R. 539).

there be, since an employee who is laid off pending reshipment is obviously no more entitled to wages or expenses during the time he is not working than an employee who has been validly discharged.

The preferential hiring contract with the I. S. U. which was also relied upon by the court below (R. 539–540), has no application whatever. The contract in terms provides that it shall not require the discharge of any employee for failing to join the I. S. U.,[8] and "vacancies," within the meaning of its provisions could not be created by the illegal discharge of employees for joining the N. M. U. The contract would apply, in other words, only if the discharge of the crews which preceded the re-manning of the ships were valid discharges, and the issue of their validity still remains as the primary issue. There is no warrant whatever for the charge made by the court below that the Board's order would "penalize the company for keeping this contract" (R. 539–540).

In summary, then, in the only two instances where crews of respondent's ships joined the N. M. U. (R. 302) those crews were promptly discharged

[8] The pertinent provision of the contract is as follows (Resp. Exh. 14, Art. II, Sec. 1); "It is understood and agreed that, as vacancies occur, members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the respective positions; provided, however, that this Section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt reshipment, or absence due to illness or accident."

en masse, an unprecedented step in respondent's operations. In announcing the discharges, respondent's officials made emphatic references to the men's change of union affiliation. The lay-ups, advanced as an explanation, came as a surprise to the captain of the *Fairland* (R. 343), involved the precipitate recall of the *Bienville* without touching at scheduled ports and were the subject of contradictory and entirely confused explanations by responsible officials of the company. During the lay-ups some of the N. M. U. members were even denied the customary shore work, for the express reason that they wore their union buttons, and others were discharged without explanation. We submit that these facts constitute substantial evidence, and that the Board's finding of discriminatory discharge should have been sustained.

2. The contract between the I. S. U. and respondent provided that the latter would allow I. S. U. delegates to board its ships, subject to regulations prescribed by respondent (Resp. Exh. 14, Art. II, Sec. 3). The contract does not, however, prevent respondent from granting like privileges to other labor organizations (*ibid.*). Yet respondent, while allowing I. S. U. delegates aboard (R. 339), consistently refused to admit N. M. U. representatives for any purpose (R. 137, 139; answer to amended complaint, paragraph 8, R. 38). The Board found this action to be a violation of Section 8 (1) of the Act (R. 107, 117).

The court below, on the contrary, accepted (R. 540) as a complete defense to this plain discrimination between the I. S. U. and the N. M. U. a bulletin (R. 298) which respondent sent to the masters of its ships and to the I. S. U., stating that neither union would be permitted to solicit members aboard the vessels. The court wholly ignored the fact, testified to by respondent's own witnesses, that the I. S. U. delegates, whom respondent continued to admit for the ostensible purpose of collecting union dues, were permitted to contact the men without supervision and without any attempt by respondent to curb solicitation (R. 339, 373). The court's view is equivalent to a holding that a blanket instruction by the head of a company to its officials and supervisors that they should not violate the Act is a complete defense to a subsequent complaint alleging discrimination, regardless of how clear the proof may be that discrimination in fact occurred.

The court below also advanced, as a further defense to the charge of discrimination in the issuance of passes, the suggestion that "One may conclude from the evidence that if the union representatives were permitted to go aboard the ships to organize and recruit members, business and shipping in all probability would be shunted aside while the rival unions staged a battle for supremacy" (R. 540). There is not an iota of evidence to support the court's assumption that solicitation by both unions would have in any way threatened

any kind of injury to respondent's business.[9] But, in any event, the supposition is beside the point. Equal treatment of both unions did not require respondent to permit solicitation by both. Respondent had simply effectively to bar solicitation by both unions, which, in fact, it purported to do, and all illegal discrimination would have been avoided.

B. On the evidence detailed above, the Board's findings were clearly entitled to finality under Sec-

[9] It is this factor, among others, which distinguishes the present case from *Peninsular & Occidental S. S. Co.* v. *National Labor Relations Board*, 98 F. (2d) 411 (C. C. A. 5th), certiorari denied, 305 U. S. 652. In the *Peninsular* case the change of affiliation from the I. S. U. to the N. M. U. was not unanimous among the crews but resulted in the creation of majority and minority factions. According to the court's opinion, this split gave rise to sit-down strikes, threats of sabotage, and the possibility of mutiny. The court therefore concluded that the crews could not be considered "competent as a unit" and their discharge was regarded as a justified safety measure (98 F. (2d), at 415). In the present case the entire crews changed their affiliation; there were no strikes of any kind, no threats of sabotage, no defiance of officers. Respondent did not at any stage of the proceeding challenge the competency of the crews in any respect, nor did the court below hold the discharges valid on this ground. The two cases likewise differ in that in the *Peninsular* case the various acts of coercion by the ship's officers were discounted by the court for the dual reason that they were not authorized by the company's responsible shore officials and that the officers were merely propagandizing in favor of their own unions. It was therefore held that there was not sufficient evidence of hostility by the company toward the N. M. U. to warrant the Board's findings. In the present case, the coercive statements and the statement that the men could retain their jobs if they rejoined the I. S. U. were made by high officials of respondent, and it is not claimed that these officials belong to any union.

tion 10 (e) and (f) of the Act. The court's terse denial of that finality is an unwarranted interference with the proper functioning of the Act and has resulted in flagrant violations of the Act standing uncorrected.

The present petition does not, however, rest solely upon the result of the decision below, even though the error, we believe, is gross and the injustice is manifest. The petition is also grounded upon the apparently consistent failure of the court below in the present decision and in its other decisions rendered during the past two years to give effect to the provision of the Act that the findings of the Board as to the facts, if supported by evidence, shall be conclusive. *National Labor Relations Board* v. *Bell Oil & Gas Co.*, 98 F. (2d) 406, rehearing denied, 98 F. (2d) 870; *Peninsular & Occidental S. S. Co.* v. *National Labor Relations Board*, 98 F. (2d) 411, certiorari denied, 305 U. S. 652; *Globe Cotton Mills* v. *National Labor Relations Board*, 103 F. (2d) 91. That apparently persistent failure presents a question of public importance in the equal administration and enforcement of the law according to its valid terms. We believe that violations of the Act have been wholly or largely unremedied, including, in one instance, acts which the court itself held to be unlawful.[10] For these

[10] In *National Labor Relations Board* v. *Bell Oil & Gas Co.*, 98 F. (2d) 405, the court first sustained the Board's findings that an employee had been unlawfully discharged, but remanded the case to the Board for clarification of the

reasons we respectfully submit that this petition for a writ of certiorari should be granted.

GOLDEN W. BELL,
Acting Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

JULY 1939.

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reinstatement provisions of its order, 91 F. (2d) 509. The Board amended its order, and the court then directed that it be made "the order and decree of this Court." Thereafter, the court dismissed a rule for contempt on the ground that its own decree was "ambiguous" and "impossible of performance," 98 F. (2d) 405. In its petition for rehearing, the Board urged that the court, if it still believed the decree to be ambiguous, should exercise its undoubted power to modify it in order to prevent a failure of justice. The petition for rehearing was denied, 99 F. (2d) 56, and the illegal acts remain unremedied.

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No. 193

In the Supreme Court of the United States

OCTOBER TERM, 1939

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WATERMAN STEAMSHIP CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

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Statute:

National Labor Relations Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. Supp. IV, Sec. 151 *et seq.*

Sec. 2 (3) 28

Sec. 7 44

Sec. 8 (1) 3, 4, 5, 6, 8, 9, 38, 39, 42, 44

(3) 3, 4, 5, 6, 9, 31, 44

Sec. 9 39

Sec. 10:

(c) 44

(e) 6, 9, 45

(f) 45

In the Supreme Court of the United States

OCTOBER TERM, 1939

No. 193

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

WATERMAN STEAMSHIP CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 537–541) is reported in 103 F. (2d) 157. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 103–119) are reported in 7 N. L. R. B. 237.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on April 11, 1939. The petition for a writ of certiorari was filed on July 10, 1939, and was granted on October 9, 1939. The jurisdiction of this Court rests on Section 240 (a) of the Judi-

cial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether there is substantial evidence to support the Board's findings that respondent discharged and refused to reinstate certain employees because they were members of a particular labor organization or had engaged in union activity.

2. Whether there is substantial evidence to support the Board's findings that respondent discriminated between two rival labor organizations in the issuance of passes permitting their representatives to board its ships, thus interfering with the employees' freedom of choice of bargaining representatives.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. Supp. IV, Sec. 151 *et seq.*) are set forth in the Appendix.

STATEMENT

Charges and amended charges (R. 23–25) having been filed by the National Maritime Union of America, a labor organization hereinafter referred to as the N. M. U., the Board, on October 9, 1937, issued its complaint and notice of hearing which were duly served on respondent (R. 26–29). The complaint, as thereafter amended (R. 29–32), al-

leged in substance that respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (3) and (1) of the Act (R. 29–32). Respondent duly filed its answer (R. 34–43), and a hearing was held from November 1 to November 5, 1937, before a trial examiner of the Board (R. 120–530).

On January 17, 1938, the trial examiner filed an intermediate report (R. 45–79) containing his findings and recommendations, to which exceptions were filed by respondent (R. 80–98) and by the Seamen's Reorganization Committee of the American Federation of Labor, as successor to the International Seamen's Union of America (R. 99–102), hereinafter referred to as the I. S. U., a labor organization which had been permitted to intervene in the proceeding (R. 126). On March 8, 1938, respondent, the I. S. U. and the N. M. U., appeared before the Board by counsel and were heard in oral argument (R. 102), and respondent submitted a brief in support of its contentions (R. 105). On May 18, 1938, the Board issued its findings of fact, conclusions of law, and order (R. 103–119). The Board's findings may be briefly summarized as follows:

Respondent is engaged in the operation of steamships in interstate and foreign commerce (R. 106). The N. M. U., which is affiliated with the C. I. O., and the I. S. U., which is affiliated with the A. F. of L., are rival labor organizations which admit to membership unlicensed personnel among seamen

(R. 106). In July 1937, the crew of two of respondent's vessels, the *Bienville* and the *Fairland*, changed their affiliations from the I. S. U. to the N. M. U. (R. 107–108). Respondent promptly dismissed the entire crews because of their membership in the N. M. U., thus violating Section 8 (3) and (1) of the Act (R. 108–114, 117). Respondent likewise violated those provisions of the Act by discharging Edmund J. Pelletier because of his membership in the N. M. U. and C. J. O'Connor because of his activities on behalf of another labor organization affiliated with the C. I. O. (R. 106, 113–117). The Board further found that respondent discriminated between the I. S. U. and the N. M. U. in the issuance of passes permitting union representatives to board respondent's vessels and thereby interfered with the employees' free choice of collective bargaining representatives in violation of Section 8 (1) of the Act (R. 106–107, 117).

Accordingly, the Board ordered respondent to cease and desist from the unfair labor practices found, and, as affirmative action necessary to effectuate the policies of the Act, required respondent to reinstate the discharged employees with back pay, including the reasonable value of maintenance on shipboard which they would have received had they not been discharged; to grant passes to the representatives of the N. M. U. in equal numbers and under the same conditions as to representatives of the I. S. U. or its successors; and to post appropriate notices (R. 117–11[illegible]).

On June 16, 1938, respondent filed its petition with the Circuit Court of Appeals for the Fifth Circuit to review and set aside the foregoing order of the Board (R. 1–21). The Board answered, requesting full enforcement of its order (R. 530–536). On April 11, 1939, the Court of Appeals set aside the Board's order, except for the provision requiring the reinstatement of C. J. O'Connor, which was modified and enforced (R. 537–542). The court held that the Board's findings of fact as to the unfair labor practices were not supported by substantial evidence (R. 539–541). On October 9, 1939, this Court granted the petition for a writ of certiorari.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In not holding that the following findings of the Board were supported by substantial evidence and were, therefore, conclusive under Section 10 (e) and (f) of the Act:

(a) That respondent discharged and refused to reinstate the entire crews of the *Bienville* (including Edmund J. Pelletier) and the *Fairland*, and also one C. J. O'Connor, because of their union affiliation or activity, in violation of Section 8 (3) and (1) of the Act;

(b) That respondent discriminated between two rival labor organizations in the issuance of passes permitting their representatives to board its ships, and thus interfered with the employees' freedom

of choice of collective bargaining representatives in violation of Section 8 (1) of the Act.

(2) In setting aside and denying enforcement to the Board's order, except as modified with respect to C. J. O'Connor.

SUMMARY OF ARGUMENT

I

If the Board's findings were supported by substantial evidence, they were conclusive on the court below. Section 10 (e) of the Act; *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board*, 301 U. S. 142, 146–147; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 270–271; *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.*, 303 U. S. 272, 275; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 229; *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.*, 306 U. S. 292, 299. The Board's findings that respondent discharged the crews of the *Bienville* and the *Fairland* in violation of Section 8 (3) and (1) of the Act are so supported. When the two ships reached their home port of Mobile, after voyages marked by the mass shift of the two crews from the I. S. U. to the N. M. U., respondent laid the ships up and dismissed the two crews. The Board's findings that the crews' change of union affiliation was the cause of their mass dismissal is supported by (a) re-

marks made by responsible officials of respondent at the time of the dismissals; (b) uncontradicted evidence that, in accordance with uniform maritime practice, it was theretofore the unbroken custom of respondent to retain part, if not all, of the crews of laid-up ships for work on repairs; (c) convincing evidence that the ships were laid up at this time in order to furnish a colorable pretext for eliminating the crews; and (d) clear proof of discrimination against the members of the two crews in the allotment of repair work during the lay-up of the ships.

The preferential hiring contract between respondent and the I. S. U. did not require the mass discrimination engaged in by respondent. The contract applied in terms only to the filling of "vacancies." Under general maritime practice, observed by both respondent and the I. S. U., neither the expiration of the shipping articles, the lay-up of a ship for repairs, or keeping a crew "standing by" without pay pending the next sailing of the ship, terminates the employment relationship and creates such vacancies. Respondent could not, of course, create vacancies by an outright discriminatory dismissal of the crews.

There is likewise substantial evidence that the two individuals separately dealt with by the Board, Edmund J. Pelletier and C. J. O'Connor, were discharged and refused reinstatement by respondent solely on account of their union membership or activities.

II

The Board's findings that respondent violated Section 8 (1) of the Act by discriminating in the issuance of passes to union representatives is supported by substantial evidence. Respondent admits that, while freely issuing passes to I. S. U. representatives, it consistently refused to admit N. M. U. representatives aboard its ships. Undisputed evidence shows that respondent's purported limitation of the I. S. U. passes to the collection of dues was not in fact enforced by respondent's officials. The discrimination constituted a plain interference with the free self-organization of the seamen in contravention of Section 8 (1) of the Act.

ARGUMENT

I

THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT THE BOARD'S FINDINGS THAT THE CREWS OF THE *BIENVILLE* AND THE *FAIRLAND* AND ONE OTHER EMPLOYEE WERE DISCHARGED IN VIOLATION OF SECTION 8 (3) AND (1) OF THE ACT

The Board found that respondent had discharged the crews of the *Bienville* and the *Fairland* because they had changed their union affiliation from the I. S. U. to the N. M. U., and that it had discharged one other employee, C. J. O'Connor, because of his union activity. These discharges, if made for the reasons found by the Board, were in direct contravention of Section

8 (3) and (1) of the Act. And it is settled that if the findings of the Board were supported by substantial evidence they were conclusive upon review in the court below. Section 10 (e) of the Act; *Washington, Virginia & Maryland Coach Co.* v. *National Labor Relations Board,* 301 U. S. 142, 146–147; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.,* 303 U. S. 261, 270–271; *National Labor Relations Board* v. *Pacific Greyhound Lines, Inc.,* 303 U. S. 272, 275; *Consolidated Edison Co.* v. *National Labor Relations Board,* 305 U. S. 197, 229; *National Labor Relations Board* v. *Columbian Enameling & Stamping Co.,* 306 U. S. 292, 299.

In our opinion the record in the present case contains clear proof of mass discrimination against employees. Yet the Court of Appeals, without discussing the evidence in detail, denied enforcement to the Board's order with the observation that "The evidence does not even point in [the] direction" of an illegal motive for the discharges, and that the Board's findings were "based on suspicion and not on the evidence" (R. 539). We submit that the court was clearly in error and that the Board's findings were supported not only by substantial evidence but also by the clear weight of the proof. This is demonstrated by a review of the evidence.

A. The Mass Dismissal of the Two Crews

Events preceding the dismissals.—Some time in June 1937, while the *Bienville* was at Le Havre, France, the unlicensed personnel voted unanimously to withdraw from the I. S. U. and to join the N. M. U. when they reached the first port of call in the United States (R. 156, 192, 211). This was Tampa, Florida, which was reached on July 1.[1] The schedule under which the ship arrived at Tampa called for stops thereafter at three other Florida ports for which cargo was carried, and for arrival at Mobile on July 11 (R. 371). By a memorandum dated July 1, respondent's port captain at the home port of Mobile (Captain Reed) ordered that the ship omit all intermediate stops except that at Pensacola, and go on "inactive status" for a period of 20 days upon her arrival at Mobile (R. 474–475; Resp. Exh. 25, set out *infra*, pp. 48–49).[2] Captain Reed, although at first testifying that he had had no word from the captain of the *Bienville* during the westward voyage other than the expected time of arrival, later admitted that his memorandum was based in part upon in-

[1] The shipping articles show that three members of the crew left the ship at Tampa on July 1. See Resp. Exh. 23; cf. R. 156. References to exhibits are to the originals thereof filed in the office of the Clerk. Excerpts from some of the exhibits are included in the Appendix.

[2] Apparently the Pensacola stop was also subsequently cancelled (R. 371).

formation received by him from the *Bienville* after it left Le Havre (R. 485–486, 490).

Upon the *Bienville's* arrival at Tampa, the entire unlicensed personnel, in a dramatic scene involving a debate on shipboard between organizers for the two unions, exchanged their I. S. U. membership books for N. M. U. books (R. 131–134, 156–157, 179–180, 192, 211). They then sent the N. M. U. organizer to the *Fairland,* which had just arrived at Tampa, and all except 3 of the unlicensed crew of that ship also joined the N. M. U. (R. 134–135, 224–225, 237). Officers of each ship were immediately made aware of these mass changes of union affiliation (R. 132, 133–135, 138, 224–225, 340–341, 425–426, 466). The I. S. U. representative at Tampa was also aware of these events and telephoned to the business agent of that organization at Mobile who made "representations" to respondent concerning the changes (R. 133, 506–507). Nicolson, respondent's executive vice-president, also apparently learned of the crews' shift prior to departure of the two ships from Tampa, for he testified that he permitted them to complete the voyage even though he knew that they had joined the N. M. U. (R. 294).

Remarks accompanying the dismissals.—Both the *Bienville* and the *Fairland* arrived at Mobile on July 5 (R. 161, 181, 201, 323), and the entire unlicensed crews of both signed off the shipping articles, and were informed that they were no

longer needed (R. 225, 326, 337, 341–342, 368, 381). There is uncontradicted testimony that Captain Reed, respondent's port captain at Mobile, and Captain Norville of the *Fairland* informed the crew of that ship in no uncertain terms that their change of unions was the reason for the dismissal and that they could keep their jobs if they quit the N. M. U. and rejoined the I. S. U. (R. 225–226). Executive Vice President Nicolson inquired from one of the seamen why the *Bienville's* crew changed to the N. M. U.; and when Port Steward Fagan learned upon inquiry of Pelletier, chief steward of the *Bienville,* that the stewards had joined the N. M. U., he said, "Well, I have got orders to lay you all off" (R. 158, 180–181, 443, 447).

Lay-ups of respondent's ships do not normally result in mass dismissals.—Respondent claims that the mass dismissals were occasioned not by the crew's change of union affiliation, as the Board found, but by the inactive status of the ships (R. 379). After routine inspection and repairs in drydock (R. 472–473), which were completed in 30 hours, the *Fairland* was kept idle for about 7 days (R. 324, 331), and the *Bienville* was tied up for about 27 days altogether (R. 323–324); when the ships sailed again both sailed with I. S. U. crews (R. 293, 37–38, 495). The testimony establishes, however, that inactive periods of this nature do not normally cause the lay-off of the *entire* crew of a vessel (R. 353–354, 238, 275). It was respondent's custom to retain at least a portion of

the crew (R. 362). In fact, Captain Norville, of the *Fairland,* did not know of a single previous lay-off of an entire crew during the 13 years he had served respondent (R. 353, 330). Executive Vice President Nicolson did recall one prior dismissal of an entire crew, but that occasion significantly resembled the cases of the *Bienville* and the *Fairland* in that, shortly before the lay-up for repairs in the summer of 1937, respondent discovered that the crew was composed of N. M. U. members (R. 300–301, 316–317, 319–321).[3]

Respondent's witnesses agreed with those for the Board that a sweeping dismissal was virtually unique and that at least a skeleton crew,[4] and usually the full crew, would normally be retained at work on the repairs while a ship is in drydock (R. 334, 359, 362, 402, 143, 144, 155, 189, 192–193, 197, 199–200, 206–207, 213, 232, 237–240, 246–251, 253–254, 256–258, 273–275). Nicholson admitted that there was plenty of work which the dismissed crews could have performed (R. 324, 325, 288, 321, 359–360, 398, 160, 162, 163, 202, 227, 247, 254, 274) and that, while there is no "set rule," crews are usually retained during repair work unless their services have been unsatisfactory (R. 296, 323). There is

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[3] This vessel, the *S. S. Pan Kraft*, was apparently the only one of petitioner's ships, aside from the *Bienville* and the *Fairland*, ever to carry an N. M. U. crew (R. 302).

[4] A skeleton crew is composed of about one-half of the number of men in the regular crew (R. 240).

no contention that the work of the two crews here involved was in any respect unsatisfactory.

Upon this evidence, the Board was plainly entitled to conclude that the mass dismissals of the two entire crews so soon after their shift to a new union was caused by respondent's hostility to the N. M. U. and its determination to keep that union out of its fleet of vessels. It is an inescapable inference that had the employees continued in the I. S. U., respondent would have observed its uniform custom of keeping the entire crew, and certainly at least a skeleton crew for work on the ships during the lay-up. And, as we shall show, *infra*, p. 30, if respondent could not use the full crew at work on the repairs, those of the seamen who could not be used would usually be kept "standing by" as members of the crew until the ships sailed again. The lay-up of a ship for repairs thus would not result, normally, in the dismissal of any of the crew.

Lay-ups arranged to facilitate elimination of the crews.—Apart from the foregoing evidence, which demonstrates that even a *bona fide* lay-up of the ships would not have led to a mass dismissal of their crews, there is abundant evidence to support the Board's finding (R. 110) that respondent arranged the dates and duration of the lay-ups for the purpose of facilitating the discriminatory elimination of the crews. There can be no other explanation for the morass of contradictions and

confusion in which respondent's executive officers became involved when they sought to explain patent discrepancies in their story that the lay-ups were arranged long prior to the crews' withdrawal from the I. S. U.

As already noted, the *Bienville* was hurriedly recalled to Mobile from Tampa, omitting three ports for which she carried cargo, and arrived at Mobile five days ahead of schedule (R. 371–372). The entire crew was laid off and the ship underwent extensive structural changes (R. 161, 195, 201, 381, 287–288, 324). While respondent at no time even made an attempt to explain the cancellation of the stops subsequent to Tampa, that is, at Gulfport, Panama City, and Pensacola, respondent's first witness, Executive Vice President Nicolson, testified that in May 1937 respondent had made "definite arrangements" to lay the *Bienville* up for a month when she arrived at Mobile in July (R. 287, 370). In support of this deliberate defense that there could not have been any possible thought of discrimination against the crews because of their change of union affiliation at the beginning of July, Nicolson asserted that steel and other materials had been ordered weeks before and "all preparations made" to lay up the ship when she arrived (*ibid.*).

On cross-examination, the witness was confronted with a schedule to which the attorneys for respondent had stipulated, in another Board pro-

ceeding,[5] on June 21, 1937, a mere 10 days before the ship's arrival at Tampa. According to that schedule the *Bienville* would remain at Mobile only from July 11 to 15, admittedly an insufficient time for the repairs which were supposed to have been planned since May (R. 370–372). Thereupon Nicolson completely abandoned his elaborate defense and withdrew his prior testimony, stating that it was "quite possible" that the steel and other materials had been purchased for the *Azalea City*, a sister ship of the *Bienville*, that "it is possible we substituted" the *Bienville* later as the ship to be repaired, and that he was "not sure" that plans had been made to lay up the *Bienville* during July (R. 372).[6]

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[5] *In the Matter of American France Line et al.*, 3 N. L. R. B. 64.

[6] In the court below respondent sought to minimize the complete collapse of Nicolson's explanation by emphasizing his diverse responsibilities. However, Nicolson was called as a witness by respondent to testify concerning the very details upon which he found it necessary to change his testimony. Repeatedly he carefully refused to testify concerning matters as to which he did not have personal knowledge (R. 289, 293, 313, 324, 360, 388), but apparently he had no doubt concerning the purported plans to lay up the *Bienville*, and testified without qualification or hesitation (R. 287, 370). He had overnight to consider his testimony (R. 302–303) and specifically stated on the next day that he did not wish to qualify any of his prior testimony (R. 365). Then, after presentation of the stipulation, he changed the whole line of his testimony (R. 371–372). That Nicolson's recollection could be faulty to this degree is difficult to believe; lay-ups which involved discharge of entire crews were unique in respondent's history (*supra*, pp. 12–14), and in this case

Respondent never challenged the authenticity of the stipulation which exploded Nicolson's attempted defense, but it did introduce into evidence a schedule (which had been attached to the memorandum of July 1 referred to *supra*, p. 10) which provided for the *Bienville* to be at Mobile from July 7 to 30 (R. 475, Resp. Exh. 25, *infra*, p. 48). This schedule was headed "Sailing Schedule, April through August 1937," and Port Captain Reed identified it as having been in his possession as early as April 1937 (R. 475–476). On cross-examination, however, when reminded of the stipulation, he said, "There is a possibility that the schedule may have been changed" (R. 489). Reed admitted that he could not explain the existence of conflicting schedules during successive months and stated that he had no record of any change in the schedules (R. 493, 489).[7]

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had been promptly made the subject of proceedings before the Board.

In any event, Nicolson's diverse responsibilities do not explain the similar story marked with similar contradictions told by Ingram, respondent's assistant port engineer. Ingram first testified that the decision to lay up the *Bienville* when she arrived in Mobile had been made after the ship left Le Havre and that materials had then been ordered for that purpose (R. 394, 411–412). But he thereafter expressed doubt whether the materials were ordered for the *Bienville* or for the *Azalea City*, and finally admitted that he had played no part in reaching a decision concerning the repairs until after the vessel arrived at Mobile (R. 411, 412, 420).

[7] Nicolson's testimony establishes that the June 21 schedule (the one in the stipulation), and not the one identified by Reed, was in effect when the *Bienville* arrived at Tampa. Nicolson testified that the July 2 sailing from Tampa was

In the case of the *Fairland* it is even more apparent that the lay-up was arranged in order to facilitate elimination of the crew because of their change to the N. M. U. When the *Fairland* left Tampa, where its crew had shifted to the N. M. U., it was respondent's plan that at Mobile the ship would receive the normal periodic drydocking of 24 to 48 hours and Captain Norville was so notified (R. 292–293, 313–315, 341–343, 346–347, 472–474, 480–481. There is no contention by respondent that inactivity of the vessel for that period would cause dismissal of any of the crew.* But when the ship docked, Assistant Port Engineer Ingram instructed Captain Norville to dismiss the crew since the ship would be idle for 6 or 7 days (R. 326, 342–344). Norville testified that Ingram did not ex-

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on schedule and the July 5 arrival at Mobile was 5 days early (R. 371–372). The June 21 schedule provided for the vessel to leave Tampa on July 2 and arrive at Mobile on July 11 (R. 371); the "April" schedule provided for the ship to reach Mobile on July 7 (Resp. Exh. 25, *infra*, pp. 48–49). Indeed, Reed's memorandum of July 1 is inconsistent with any contention that the schedule to which he testified was in effect when the *Bienville* reached Tampa, for a change in plans was apparently necessary in order to bring the ship to Mobile in time to make the repairs. Nor can this omission of the intermediate ports be explained by any assertion that the ship was late: Reed's statement said the vessel was due to arrive at Tampa on July 1 and it did arrive on that date (R. 475, *supra*, note 1, p. 10).

*Compare Nicholson's unqualified testimony: "If we kept the vessel in drydock for five days, say, we would keep the full crew by her, but if we kept her laid up seven days, we would think very carefully whether we could use the crew then" (R. 387; see also R. 344).

plain the reason for the change of plans to him (R. 343–344), but, as we have seen, Norville told the seamen they were not needed because they had joined the N. M. U. (*supra*, p. 12; R. 225). The ship speedily underwent the routine drydocking, was back in the water within 30 hours ready for service, but was kept idle for several days without any apparent reason (R. 324, 331, 387).[9]

At the hearing it was sought to discover when the change of plans for the *Fairland* from the normal brief drydocking to a more extended lay-up was made. Ingram testified that he, Nicolson, and Port Engineer Lemon had decided upon the change, but would not fix the date (R. 400–401). According to Ingram, the decision might have been a "quick change" made after the ship left Tampa, where the crew had joined the N. M. U. (R. 400). It affirmatively appears from Nicolson's testimony that the decision was made after the crew changed to the N. M. U. and after the vessel sailed from Tampa (R. 368; see R. 343).[10]

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[9] It does not clearly appear just how long the *Fairland* was inactive (R. 425, 324, 326, 337). She arrived on July 5, was in drydock for 30 hours, and sailed again about July 15 (R. 337–338). Since it takes about 3 to 4 days to load cargo on one of respondent's ships (R. 476–477), the period of total inactivity must have been about 4 or 5 days. Nicolson thought the vessel was inactive for a total of 7 days, including the drydocking period (R. 324).

[10] It appears elsewhere in Nicolson's testimony that the decision to dismiss the crew of the *Fairland* was made after the vessel arrived at Mobile (R. 292).

Casting equal suspicion upon the *bona fides* of the extended lay-up of the *Fairland* were the conflicting reasons given for it. Nicolson explained that business was slack, the *Fairland* was late, and that "We decided to put her back a week on schedule" (R. 367–368). He testified that no "repairs to speak of" had been made other than to clean and paint the ship and draw its tail shaft, all of which accounted for only 30 hours of the lay-up (R. 387, *supra*, p. 19). A setting back of the schedule was the reason finally given to Captain Norville (R. 344). But Port Captain Reed testified that such omission of a voyage was unusual, that he did not know whether the *Fairland* was late, that he would have been advised of a change in the schedule, but that he did not remember whether he had received notification of the plan to which Nicolson testified (R. 490–491).[11] Neither did Ingram say anything about the ship being behind schedule; he gave as the reason for the lay-up a detailed list of repairs which he said were made (R. 390–392).

From the foregoing evidence, the Board was entitled to conclude that respondent arranged the lay-ups in order to facilitate elimination of the crews. This confirms the inference, already strong from the remarks which accompanied the dismissals and from the unique nature of the mass

[11] Before this point in his cross-examination, Reed did not mention lateness as a reason for laying up the *Fairland*. He mentioned only the inspection and slight repairs which made it necessary for the ship to go into drydock for 30 hours (R. 472–474).

action, that the crews were dismissed because of their membership in the N. M. U.

Discrimination in allotment of repair work.— The Board's conclusion becomes irresistible when respondent's patent discrimination against the members of these two crews in the allotment of work on the repairs is considered.

It was respondent's uniform custom to use the crews of drydocked vessels in the shore gangs working on repairs and to "send word out" to the crews that such work was available for them (R. 401, 422, 392.)[12] The Board found (R. 108), and there is evidence to support its finding, that it was not until after Nicolson had received from the Board's Regional Director a telegraphic request that the N. M. U. members be reinstated without discrimination pending an election to be held upon petition of the I. S. U., that the usual word was sent to the crews of the *Bienville* and the *Fairland* (R. 360, 369–370, 403; Resp. Exh. 19). Nicolson's testimony that this was merely a "coincidence in time" is inconsistent with his statement that the men were given jobs because respondent did not wish to discriminate against the N. M. U. (R. 370, 369).

[12] The preferential hiring contract between respondent and the I. S. U., discussed, *infra*, pp. 23–30, had no application to this work. It did not in terms apply to shop work and it is conceded that it applied only to jobs as members of the crew (R. 288, 291, 368).

A gang of about 125 men worked 16 to 24 hours a day on the *Bienville* (R. 324–325, 288–289).[13] Some of the men discharged from the ships were employed at this work for short periods (R. 159, Resp. Exh. 19). One of them, an employee named Stewart, testified that Ingram told him to remove his N. M. U. button, warning him that "You are not going to keep on this job with that button, with that N. M. U. button on, or by carrying that [membership] book," and offered him employment as a seaman if he would rejoin the I. S. U. (R. 226–227, 393, 415). Upon Stewart's refusal, Ingram discharged him from the shop gang doing repair work (R. 227). When Stewart sought to sign on for the *Fairland's* next voyage, Ingram and Captain Norville told him to leave the ship and not to come back since he belonged "with those radicals" (R. 228). Neither Ingram nor Norville denied this testimony.

Ingram also warned Turner, a member of the *Bienville* crew, to remove his N. M. U. button; Turner complied but was subsequently discharged

[13] The major portion of this gang was probably already at work when word was given the seamen discharged from the two ships that they could come to work. The repairs were commenced on July 6 and the telegram to Nicolson was received on July 7 (R. 369). It does not appear exactly when respondent sent out the notice but the seamen started work on July 8 (Resp. Exh. 19). On the previous day the number of men employed in the shops had risen to 175 from the 108 employed on July 6 (Resp. Exh. 20).

with the warning that he had better rejoin the I. S. U. if he wished employment (R. 159–160). The work upon which Turner was engaged was not finished at the time of his dismissal (R. 160). On the same day other members of the two crews working in the shops were dismissed, although their work was not yet done (R. 162–163, 202–203, 227). Respondent offered no credible explanation for these discharges at the hearing. Its treatment of the N. M. U. members whom it took into the shop after intercession by the Board's Regional Director thus furnishes cogent proof of its determination to eliminate the N. M. U. from its crews.[14]

The defense based on respondent's preferential hiring agreement with the I. S. U.—Respondent contends that, whatever respondent's motives, the Board could not find that the crews were discriminatorily discharged for the reason that the employment of the seamen terminated upon expiration of the shipping articles under which they sailed (R. 189–190) The argument is, in brief, that the crews' employment was for a term only, that at the end of that term their positions automatically became

[14] The only reference by the court below to this evidence was its statement that "some of the members of the crews were employed in the shops while the ships were laid up" in support of its statement that respondent did not "make war on the unions" (R. 539). The court did not refer to the circumstances or duration of the crews' shore work, nor to the clear discrimination against them in such work because they would not leave the N. M. U.

vacant, and that respondent was bound by the preferential hiring agreement in its contract with the I. S. U. (Resp. Exh. 14, set out *infra*, pp. 45–48) to fill the vacancies from the membership lists of that union.[15] The argument that vacancies were thus created finds no support in, but rather is contradicted by, the terms of the contract and its uniform interpretation and application by respondent and the I. S. U. Likewise, the proof affords overwhelming support for the Board's findings (R. 109–110) that the mere termination of a voyage covered by shipping articles does not terminate the employment relation without some further action by either the employer or the employee (*infra*, pp. 26–28).[16]

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[15] The preferential hiring provision of the contract is as follows (Resp. Exh. 14, Art. II, Sec. 1): "It is understood and agreed that, as vacancies occur, members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the respective positions: provided, however, that this Section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt reshipment, or absence due to illness or accident."

[16] The shipping articles covering the voyage of the *Bienville* terminating at Mobile on July 5, 1939, provided as follows (Resp. Exh. 23):

"IT IS AGREED between the Master and seamen, or mariners, of the SS Bienville, Mobile, Ala., of which F. O. LUND is at present Master, or whoever shall go for Master, now bound from the Port of Mobile, Ala., to HAVRE, FRANCE—ONE OR MORE COASTWISE PORTS and such other ports and places in any port of the world as the Master may direct, and back to a final port of discharge in

The contract between the I. S. U. and respondent demonstrates that both parties recognized the continuity of the employment relation between voyages covered by shipping articles and that they meant the contract to cover the relation between voyages and articles as well as during them. The contract provisions regulating subsistence allowance applied when "the men are on articles or port pay roll" (Art. III, *infra,* p. 46). Article IV of the contract, in providing terms of employment of unlicensed personnel, sets hours and rates of pay for overtime "in home port," which it defines as the port at which the articles are opened or closed (*infra,* pp. 46–48).[17] The parties must have in-

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the United States, for a term of time not exceeding TWELVE calendar months." When the crew members were "discharged" from the articles, they signed the following statement, also signed by the captain:

"We, the undersigned seamen, do hereby, each one for himself by our signatures herewith given in consideration of settlements made before the shipping commissioner, release the Master and owners from all claims for wages in respect of this voyage or engagement, and I, the Master, do also release each of the undersigned seamen from all claims, in consideration of this release signed by them" (R. 431).

[17] Respondent's licensed engineers also sail under shipping articles (Bd. Exh. 11, Sec. 18). The contract between respondent and the M. E. B. A., as representative of the engineers, in providing for vacations with pay after a minimum period of service "from the time of entering the employ of the company" plainly presupposes a continuing employment relation (*ibid.*, Sec. 17; R. 268).

tended the provision protecting nonmembers of the I. S. U. from "discharge" (note 15, p. 24, *supra*) to apply in the interim between articles, for the articles themselves protect the seamen from dismissal during their term.

The proof is clear that prior to this litigation neither respondent nor the I. S. U. understood that the expiration of shipping articles created "vacancies" within the meaning of the agreement. It was respondent's custom to canvass the crews a day or two before the end of a voyage in order to list the seamen who would sign on for the next voyage (R. 192, 200–201, 212–213, 220). There was no inquiry whether the men were still union members, for the I. S. U. did not require seamen who signed off articles at the completion of a voyage to go through the rotation lists at the hiring hall as a prerequisite to signing on the next voyage (R. 340, 143, 150, 166, 344, 358–359, 378, 503, 523). All of respondent's crews were initially secured from those rotation lists, but they applied only to "unemployed" seamen, whereas the crew of an incoming ship were regarded as continuing in respondent's employ despite the expiration of shipping articles (R. 149–150, 374, 377–378).

Nicolson testified without contradiction that under the contract seamen who were not members of the I. S. U. could work for respondent indefinitely "provided they did not leave our employ"; that is, by quitting or through dismissal for cause (R. 377–378, 350–352). All members of the

crew who were satisfactory and did not quit were kept aboard the vessel and signed on for the next voyage (R. 334, 358–359, 482, 520). And during the intervals between articles, the seamen remained on respondent's pay roll and continued to perform without interruption the duties of crew members, such as standing watch, aiding in loading and unloading, and cleaning the ship (R. 308, 151, 154–155, 178, 199, 223, 229–230, 266, 336, 476–477, 482, 519–520). When asked whether the employment of the two crews here involved had terminated "when the time expired" or whether respondent had terminated their employment, Nicolson said, "We terminated their employment at the time their contract was up" (R. 294).

Testimony concerning the custom in the maritime industry as a whole buttressed the above proof that neither respondent nor the I. S. U. had ever deemed employment to terminate upon expiration of shipping articles. Neither employer nor employee regards the relation as ended with the articles; the difference between "discharge" from articles and dismissal from employment is well recognized (R 150–151, 161, 166, 178–179, 187–188, 193, 211–212, 221, 229–230, 241, 243–244, 252–253, 255, 257, 275, 334–336, 350–351, 429, 431–434, 520). The maritime unions acknowledge the continuity of employment between sets of articles and use the term "vacancy" to refer to the situation which exists when an employee resigns or is dismissed for cause and the company calls the hiring hall for a

replacement (R. 143–144, 161, 179, 200, 213, 230, 241–242, 276, 503).

The foregoing testimony was not controverted at the hearing. The testimony adduced by respondent and the I. S. U. established merely that the employment relation is terminable at the will of either party between voyages covered by shipping articles and that the employer is not, therefore, under any "obligation" to reship the crew (R. 427–430, 438, 471, 495–496, 522–524).

Respondent further contends, apparently as an alternative to the argument that "vacancies" were created when the articles expired, that the expiration of the articles plus the lay-up of the ships terminated the crews' employment and required application of the preferential hiring agreement (R. 142). If the evidence supports the Board's findings that the lay-ups were arranged for the purpose of facilitating dismissal of the two crews, as it clearly does (*supra*, pp. 14–21), the argument must fail. Respondent could not, consistently with the Act, designedly manipulate the schedules of its ships in order to create a colorable claim that the preferential agreement applied. Such discrimination could not terminate the employment relationship within the contemplation of the National Labor Relations Act (Section 2 (3)) or create a "vacancy" within the meaning of the agreement. Cf. *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 231 *et seq.*, 244 *et seq.*

Even if the lay-ups were of wholly lawful motivation, however, they still could not be said to create "vacancies" within the meaning of the agreement. As already noted, the dismissal of an entire crew during repairs was a distinct departure from respondent's custom, and there was, in fact, plenty of work which these crew members could have performed (R. 202, 227, 325). It is customary to use the crew on repair work (R. 151, 155, 178, 189, 192–193, 197, 199–200, 202, 206–207, 213, 227, 232, 237–240, 246–250, 253–254, 256–258, 273–275, 321, 359, 362, 402). If that were done, clearly no "vacancies" would be created (R. 178, 241–242). The reasons assigned by respondent for not observing its custom in this case go only to the asserted impracticability of housing the men aboard the ships, not to any reason why they should not have worked on the repairs (R. 359–361, 287, 292, 325, 326, 331, 477).[18]

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[18] The reasons were inadequate even to explain lack of housing facilities. The steam was shut off, but it was not asserted to be necessary for heating purposes, but only for operating the sanitary pump (R. 287). And the drydock has compressed air available to operate the sanitary pumps of vessels whose fires have been closed down (R. 333–334). The officers continued to stay aboard the *Fairland* (R. 353), and probably aboard the *Bienville* (R. 160), despite the asserted lack of sanitation. While it is claimed that structural repairs to the *Bienville* would have made housing the crew inconvenient, it is not so asserted with respect to the *Fairland*, and the drydocking of the *Fairland* would not have caused shut-down of the steam had it not been for the additional unexplained lay-up of the ship (R. 332).

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Further, the evidence is uniform that, even if there is no work for some or all of the seamen, the customary procedure is for the idle men to "stand by" the ship, without pay but as its crew, ready to rejoin it when it sails, and that when that is done "vacancies" are not thought to exist within the meaning of the agreement (R. 143, 163–164, 166–167, 188, 199–200, 206–207, 215–218, 240–241, 244, 246, 250, 251, 253, 258, 274, 296, 347, 438).[19] Respondent did not controvert the existence of this practice and offered no reason why it was not followed. The officers of the *Bienville* apparently thought that respondent would follow the practice during the lay-up here involved (R. 161, 220); the officers asked various seamen, after the vessel left Tampa, whether they wished to make another voyage (R. 192, 200–201), and the crew members were not informed of their impending dismissal until the arrival at Mobile (R. 158, 186).

We think that this uniform practice effectively disposes of any contention that the agreement between respondent and the I. S. U. required elimination of the N. M. U. crews. Respondent's reasons must be sought elsewhere than in the preferential hiring contract. It is submitted that, upon the foregoing evidence, the Board's findings as to the real motives are supported by the clear weight of the proof.

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[19] Crew members who are "standing by" are not required to go through the union's rotation hiring lists (R. 166, 240).

B. The Two Individual Discharges

The Board found that respondent discharged and refused to reinstate C. J. O'Connor and Edmund J. Pelletier because of their union membership and activity, in violation of Section 8 (3) of the Act (R. 113–117). The court below modified the Board's order as to O'Connor and set it aside as to Pelletier, specifically rejecting in each instance the Board's findings of illegal discrimination (R. 540–541).[20] We think those findings are amply supported and that the Board's order is valid as to both employees.

O'Connor.—O'Connor, an employee of eight years' service with respondent, was second

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[20] It is not apparent why the court modified and enforced the order as to O'Connor rather than setting it aside *in toto*. As modified, the order provided that (R. 542): "C. J. O'Connor is entitled to pay for the number of days the company allows and grants for vacation to its employees in his class. Upon application he is also entitled, if he can satisfactorily qualify, to be offered reinstatement to his former position."

If the Board's findings that O'Connor was discharged in violation of Section 8 (3) were supported by substantial evidence, the cease and desist provisions and the pertinent portion of the reinstatement and back pay provisions of the Board's order were entitled to enforcement. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265; *National Labor Relations Board* v. *Mackay Radio & Telegraph Co.*, 304 U. S. 333. If the Board's findings of illegal discrimination were not so supported, neither the Board nor the court was authorized to settle the equities between O'Connor and respondent.

assistant engineer on the S. S. *Azalea City;* he was selected by the other engineers on that ship to represent them in complaining, during a voyage, against certain practices they thought to be violative of the overtime provisions of the contract between respondent and the M. E. B. A., a labor union affiliated with the C. I. O., to which the engineers belonged (R. 257, 262–263, 267). O'Connor made the protest and insisted that it be entered in the log book as a basis for a future claim for pay (R. 263. 267–268).[21] When the ship reached Gulfport, Ingram, who was respondent's assistant port engineer at Mobile and O'Connor's superior, came aboard, discussed the complaint with O'Connor, and told him to take a vacation when the vessel docked at Mobile and that the matter would be straightened out (R. 263–264, 268–269, 389, 405, 422). Ingram also said that he had a job on a coastwise vessel for O'Connor, in fulfillment of a prior promise to O'Connor (R. 264, 270, 405, 411). Relying upon his superior's instructions and promise, O'Connor left the ship at Mobile (R. 264). He was never recalled to work, although it is respondent's practice to recall by telephone engineers who are awaiting assignment, and although there were vacancies which O'Connor could have filled (R. 266, 406–408, 409).

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[21] Captain Nicolson could not recall any prior occasion when one of the engineers had acted as spokesman for others in protesting asserted violations of the contract (R. 379).

Respondent first contended that O'Connor voluntarily left the *Azalea City* (R. 35), but when Ingram corroborated O'Connor's testimony as to his instructions and the promise of a coastwise berth (R. 389, 405, 411, 422), respondent advanced the assertion that an engineer on vacation should notify Ingram when he is ready to go to work (R. 390). Two answers are returned by the evidence. (1) Engineers not on vacation, but awaiting placement, are notified by respondent when to report, and respondent informed O'Connor soon after he left the *Azalea City* that he was not entitled to a vacation (R. 266, 270, 390, 405–407). (2) O'Connor did apply for work, but Ingram would not answer the request and testified that it was not sufficiently "formal," that he thought O'Connor was "joking" and his request "fantastic" (R. 265, 269–270, 408–410).[22]

No reason whatever appears on the record for this elimination of an employee of eight years' service except his assumption of the leadership in a dispute with respondent concerning terms of employment. The Board was entitled to find (R. 116) that O'Connor was discriminated against for that reason.

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[22] When asked "Didn't he ask you about going to work?", Ingram testified, "No, sir; he said 'would Waterman give me employment.' He did not mention it direct" (R. 409). Later Ingram said, "Well, he didn't say he was ready to go back; he asked for employment" (R. 410).

Pelletier.—Pelletier, chief steward of the *Bienville,* joined the N. M. U. and was discharged along with the rest of the crew, with pointed reference to the shift of union affiliation (R. 176, 179, 180–181, 443, 447, 452).[23] Respondent's claim is that he was discharged for inefficiency (R. 208–209).

Port Steward Fagan inquired whether Pelletier and his subordinates had joined the N. M. U., and upon being informed that they had, instructed Pelletier to dismiss the stewards (R. 180–181, 443). He then accused Pelletier of incompetency in connection with an incident preceding the *Bienville's* last voyage and dismissed him (R. 443–444, 447–448). The incident, a request for an additional mess boy to serve the crew, furnished the flimsiest sort of pretext upon which to base a claim of inefficiency (See R. 443–444, 448–450, 452, 453–454, 458–459, 524–528). Fagan, although he sought to give the impression on the witness stand that respondent had been having difficulty with Pelletier for some time, had himself promoted Pelletier to the position of chief steward—a promotion carrying a pay increase—just prior to his last voyage (R. 176, 444, 450, 453–454). Pelletier worked for

[23] The chief steward is usually retained during lay-ups and an I. S. U. steward was assigned to Pelletier's duties immediately upon his dismissal (R. 181, 188–189, 190, 446, 451, 456–457). There is hence no claim that the lay-up of the *Bienville* was the cause of Pelletier's discharge, and for that reason it was dealt with by the Board separately from the discharge of the remainder of the *Bienville* crew.

respondent from 1934 until his discharge in 1937 (R. 176).

Respondent also based its claim that Pelletier was inefficient upon a letter from the *Bienville's* captain to Port Captain Reed (Resp. Exh. 26, set out, *infra,* pp. 49–50), in which he complained about Pelletier (R. 444). But Fagan testified that there were similar complaints against any steward on any ship on practically every trip, and that he had never discharged another chief steward because of them (R. 461–463, 468–469). He apparently was not interested in the complaints against Pelletier, for when the ship docked at Mobile, Fagan asked the mate how the steward's department was, and when the first information forthcoming was that the steward and his subordinates had shifted to the N. M. U. he inquired no further (R. 447, 466). Finally, the letter was not mentioned when Fagan discharged Pelletier; the mess-boy incident preceding the sailing of the *Bienville* was the only reason Fagan gave at that time (R. 450).

Conclusive proof that respondent's objection to Pelletier was based upon his membership in the N. M. U., not upon the incompetency alleged, is afforded by respondent's willingness to reinstate Pelletier when he rejoined the I. S. U. Pelletier testified without contradiction that after he had returned to the I. S. U. and was on the rotation lists Fagan inquired how far up on the list he was and, when Pelletier replied that he was seventh or eighth,

said "It won't be long now before you go to work" (R. 182–183).

The proximity with which Pelletier's discharge followed his shift to the N. M. U., together with the implausibility of respondent's explanation, justified the Board in concluding (R. 113–114) that Pelletier's discharge was merely another expression of respondent's hostility to the N. M. U. and of its determination to keep that organization off its ships.

The record affords no explanation even remotely convincing for respondent's elimination of the employees here involved other than their affiliation with a new labor organization, the N. M. U., to which respondent was opposed. The unprecedented mass dismissals of two entire crews upon lay-ups which normally would not have occasioned such dismissals, together with statements by responsible officials of respondent that the men's affiliation with the N. M. U. was the reason for the action, the convincing proof that the lay-ups were arranged by respondent to facilitate elimination of the crews, and, finally, the hostility toward the N. M. U. evidenced in respondent's patent discrimination against members of that organization in the work on repairs and in its refusal to issue ship passes to N. M. U. organizers although passes were freely issued to I. S. U. officials (discussed

infra pp. 37–42), all afford a substantial basis for the Board's findings. The court below either denied competency to all evidence favorable to the Board's findings or completely ignored such evidence when it stated, without any review of the evidence, that (R. 539):

> The evidence is virtually without dispute that repairs on the S. S. *Bienville* and S. S. *Fairland* had been planned by the company long before the crews changed their membership from one union to another. When the ships were laid up for repairs it was only for reasons of economy, we think, that the crews were discharged. There was no effort on the part of the company to make war on the unions. The evidence does not even point in that direction. Some of the members of the crews were employed in the shops while the ships were laid up.[24]

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[24] The "economy" motive which the court found is simply incomprehensible. As noted, shipowners usually employ the crew on repairs and; in the event that they do not wish so to use the crews, may keep the men "standing by" without pay until the ship is ready to sail again, and this temporary furlough does not terminate the employment relation. An employee who is "standing by" pending the next voyage is no more entitled to wages or expenses during the time he is not working than an employee who has been validly dismissed. Respondent asserted at the hearing that the steam on the ships was shut down for reasons of economy (R. 367) but never made any effort to explain in what way dismissal of the crews would save it money.

II

THE BOARD'S FINDINGS THAT RESPONDENT VIOLATED SECTION 8 (1) OF THE ACT BY DISCRIMINATING IN THE ISSUANCE OF PASSES TO UNION REPRESENTATIVES ARE SUPPORTED BY SUBSTANTIAL EVIDENCE

The Board found that respondent violated Section 8 (1) of the Act by discriminating between the I. S. U. and the N. M. U. in the issuance of passes permitting representatives of those unions to board its ships (R. 106–107, 117). It is not disputed that respondent issued passes to I. S. U. representatives pursuant to its contract with that organization (Resp. Exh. 14, Art. II, Sec. 3, *infra*, p. 46); respondent admitted in its answer that it had refused to issue passes to N. M. U. representatives and stated at the hearing that it would not grant passes to that organization under any circumstances (R. 38–39, 136–137, 139). There is no contention that the contract in terms vested in the I. S. U. an exclusive right of access to the employees, nor does respondent claim that a patently unequal treatment of the two unions would not violate the Act. What respondent contends is that it maintained an equal balance by denying to both organizations alike the privilege of soliciting members aboard its ships. The I. S. U. representatives, respondent says, were permitted to board the ships solely in order to collect dues, and it urges that such access to the ships did not vest in the I. S. U. such

an advantage as to constitute interference under Section 8 (1) of the Act. This defense clearly fails on the facts.

On July 17, 1937, soon after the mass discharge of the crews of the *Bienville* and the *Fairland*, Executive Vice President Nicolson sent to the masters of all respondent's vessels instructions that, in view of the pending elections to determine whether the N. M. U. or the I. S. U. represented the unlicensed personnel on respondent's ships, delegates of neither union were to be allowed to board the ships for the purpose of soliciting members (R. 41–42, 173, 298). However, respondent's officers continued to allow the I. S. U. delegates aboard the ships, ostensibly for the purpose of collecting dues, and took no steps whatever to enforce Nicolson's directions that the I. S. U. representatives be not permitted to solicit members or otherwise influence the choice of a bargaining representative. Captain Norville of the *Fairland* did not know whether the I. S. U. representatives admitted to his ship restricted themselves to the collection of dues (R. 339), and the uniform testimony is that their relations with the seamen were not subjected to any restrictions whatsoever (R. 179, 373, 498). Although the Board's Regional Director protested that respondent's action was not in accord with the Board's direction in the election proceeding (R. 137–138, 140–141; Bd. Exhs. 9, 10), respondent

would not reconsider its refusal to issue passes to the N. M. U.[25]

The Board's finding of discrimination between the two unions was thus plainly supported by substantial evidence. The view of the court below is equivalent to a holding that a blanket instruction by the head of a company to its officials and supervisors is a complete defense to a subsequent complaint alleging discrimination, regardless of how clear the proof may be that discrimination in fact occurred and was tolerated.

Respondent's secondary defense consists of a contention that the N. M. U. had no members aboard its ships, so that the exclusion of its representatives could not harm it. The defense is probably untenable in fact and is in any event insufficient. The representation of respondent's crews

[25] The elections were directed to be held as part of a proceeding initiated upon a petition by the I. S. U. under Section 9 of the Act asserting that a question affecting commerce had arisen concerning the representation of the unlicensed seamen employed by respondent and certain other companies. On July 16, 1937, the Board issued its Decision and Direction of Elections to determine which union was the authorized representative of the crews employed by each company (Bd. Exh. 6; 3 N. L. R. B. 64). On August 16, 1937, the Board issued a Supplemental Decision in the representation case noting that some of the companies were discriminating in the issuance of passes and that this practice constituted an interference with the elections. The Board directed that the preference should cease (Bd. Exh. 7; 3 N. L. R. B. 74, 76). Because of the pendency of the present unfair labor practice proceeding, no election was ever held among respondent's employees (see 12 N. L. R. B., No. 82).

was in doubt despite its contract with the I. S. U.; indeed, it was that organization which filed a petition asserting that a question concerning representation had arisen. The Board found that the division of the employees' loyalties necessitated an election (note 25, p. 39, *supra*). The N. M. U. probably had many members or sympathizers among respondent's crews. It was entitled, in any event, to an equal opportunity to compete with the I. S. U. for the allegiance of those seamen who were not affiliated with either union. The vigorous debate between representatives of the two organizations which preceded the mass shift to the N. M. U. of the two crews here involved illustrates the value, to each organization, of an opportunity to present its case (R. 131–135).

The court below stated that it might conclude from the evidence that if representatives of both unions had been allowed to board the ships to solicit members "business and shipping in all probability would be shunted aside while the rival unions stage a battle for supremacy" (R. 540). There is no evidence whatever to support such a conclusion.[26]

[26] In this respect, among others, the case is materially different from *Peninsular & Occidental S. S. Co.* v. *National Labor Relations Board*, 98 F. (2d) 411 (C. C. A. 5th), *certiorari denied*, 305 U. S. 653, where the shift of part of each crew to the N. M. U. created hostile factions and, according to the court, gave rise to sit-down strikes and threats of sabotage and mutiny. The court regarded the mass discharge of the crews as a justified safety measure (98 F. (2d) at 415). The unanimity of the shift in the present case avoided any such situation and there is neither evidence of

Further, both the discrimination and all danger of strife could have been avoided by barring solicitation by either union, as respondent purported to do. The discrimination which actually occurred here consisted of respondent's real and effective ban upon solicitation by the N. M. U. while it made but a pretense of halting solicitation by the I. S. U., thus manifestly according the latter organization a decided advantage in organizing the men and in preparing for the election. It is contrary to human experience to assume that solicitation would not go on merely because of executive pronouncement that representatives of the I. S. U. were to be given freedom of the ships solely to collect dues. Respondent's conduct constituted a plain interference with the free self-organization of its crews in direct violation of Section 8 (1) of the Act.[27]

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any disobedience nor any claim that safety required the crew's elimination, the sole reason advanced being the lay-up of the two ships. Further, the statements that N. M. U. men could not sail on respondent's ships (*supra*, p. 12) were made by high officials of respondent who belonged to no union; it has not been contended, as it was in the *Peninsular* case, either that such utterances were unauthorized or that they constituted permissible propaganda by union members on behalf of their own unions.

[27] Parenthetically, it may be noted that respondent's assertion as to the extent of its liability under the order of the Board is inaccurate as well as irrelevant. In respondent's brief in opposition to the petition for certiorari, the statement is made (p. 2) that the back pay required by the Board's order amounted to more than $200,000 at the time that brief was filed. No indication was given of how counsel computed this amount, but the computation is manifestly erroneous. It apparently takes no account of earn-

CONCLUSION

It is respectfully submitted that the decision of the court below setting aside and denying enforcement to the order of the Board, except as modified and approved as to O'Connor, should be reversed, and the cause remanded with directions to grant the order full enforcement.

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ings since the discharge, which are deductible from the amount to be paid under the order (R. 118). Nicolson testified that about half of the discharged employees were at work on respondent's ships at the time of the hearing, having rejoined the I. S. U. (R. 290, 381, Resp. Exhs. 19, 21). It is extremely improbable that none of the others obtained employment, but assuming that 20 men have remained totally unemployed, and taking a very high average of $100 per man per month for wages and maintenance (compare the wages provided by the I. S. U. contract, Resp. Exh. 14), respondent's liability would total $2,000 per month, or $60,000 from July 1937 to the end of December 1939.

APPENDIX

The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 157 *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * *
>
> (3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *
>
> * * * * *
>
> SEC. 10.
>
> (c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such af-

firmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

(e) * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

(f) * * * the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

Excerpts from Exhibits, as noted. Originals of all exhibits are on file in the office of the Clerk.

RESPONDENT'S EXHIBIT NO. 14

INTERNATIONAL SEAMEN'S UNION OF AMERICA

ATLANTIC AND GULF DISTRICT

Eastern and Gulf Sailors' Association, Inc.
Marine Firemen, Oilers and Watertenders' Union of the Atlantic and Gulf

Marine Cooks and Stewards' Union of the Atlantic and Gulf

AGREEMENT WITH ATLANTIC AND GULF STEAMSHIP COMPANIES

Effective as of January 1, 1935. As Amended March 9, 1936. As Amended September 28, 1936. As amended February 3, 1937.

* * * * *

Article II—Preference

SECTION 1. It is understood and agreed that, as vacancies occur, members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the respective positions; provided, however, that this

Section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt reshipment, or absence due to illness or accident.

* * * * * *

SECTION 3. The authorized representatives of the Union shall have the right to go on board ships covered by this agreement, subject to regulations prescribed by the Owners, for the purpose of consulting with seamen employed thereon. Under no circumstances shall representatives of the Union interfere with the men while at work, and on no account is ship work or sailing of ship to be hindered or delayed.

* * * * * *

Article III—Wages

* * * * * *

When vessels are in commission and the men are on articles or port payroll, and sleeping accommodations and or subsistence are not furnished, a cash allowance of 75 cents per night for lodging, and 35 cents per meal shall be allowed each man.

Article IV—Working Rules

SECTION 1. Any work for the safety of the vessel, passengers, crew or cargo shall be done at any time.

The following provisions relating to working hours shall govern the employment of unlicensed personnel:

In deck and engine departments. Straight time shall be paid for the following hours:

* * * * * *

(c) In Home Port, all men may be required to work eight (8) hours daily from 8

A. M. to 5 P. M., except Saturday afternoons, Sundays, and the following legal holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day; provided, that on ships sailing on said excepted days, where sea watches are set at Noon, overtime shall be excluded. Time for boat and fire drills and other emergency work for the safety of the ship, its passengers, crew or cargo, may be required in excess of the above eight (8) hours.

* * * * *

Overtime.—Overtime shall be paid for the following hours:

* * * * *

(c) In Home Port, all hours worked in excess of eight (8) hours straight time according to law, except fire and boat drills and other emergency work for the safety of the ship, its passengers, crew or cargo; Saturday afternoons, Sundays and the following legal holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day shall be considered overtime, except as provided in subsections 1 (c) and 1 (d) of Section A above.

* * * * *

In Steward's Department.—1. Straight time shall be paid for the following hours:

* * * * *

(c) In Home Port And Terminal Ports, all men shall be required to work eight (8) hours daily between six (6) A. M. and seven (7) P. M. except Saturday afternoons, Sundays, and the following legal holidays: New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day; provided, that if a ship arrives or

sails on the above specified days overtime shall be excluded. Fire and boat drills and other emergency work for the safety of the ship, its passengers, crew or cargo, may be required in excess of the above (8) hours.

(d) Home Port shall be considered to be the port at which shipping articles are opened, or the port at which crew is paid off upon completion of voyage.

RESPONDENT'S EXHIBIT NO. 25

WATERMAN STEAMSHIP CORPORATION,
INTER-OFFICE CORRESPONDENCE,
Mobile, Alabama, July 1, 1937.

S. S. *Bienville*, #2, Voyage Termination.

To all DEPARTMENTS:

The above vessel is due to arrive in Tampa on July 1st, from Hamburg, with 797 tons inward cargo for Tampa, 29 Panama City, 188 Pensacola, 38 Gulfport, and 1,616 Mobile.

From Tampa she will proceed to Pensacola and Mobile. Voyage #2 will end at midnight following completion of discharge of the Mobile cargo, at which time the vessel will go on inactive status for a period of about twenty days.

C. Reed,
C. REED, *Port Captain.*

CR/L.
cc to Tampa, Panama City, Pensacola, Gulfport. Captain F. O. Lund.
(Attached to above:)

Sailing schedule—April thru August, 1937

Steamer	Position	Due gulf	Due sail Eastbound	Discharging Ports	Due return Gulf	Turn around
Bienville			Sailed 5/9	Havre/Antwerp/ Rotterdam/ Bremen/Hamburg.	7/2	60
Bienville	Repair	7/7	7/30	Liverpool/Manchester/Avonmouth via Canada.	9/22	60

RESPONDENT'S EXHIBIT NO. 26

MOBILE OCEANIC LINE,
LE HAVRE, FRANCE, *May 30th, 1937.*

Received June 10, 1937, Waterman Steamship Corp.

Capt. C. REED, *Port Capt.*
Waterman S. S. Corp., Mobile, Ala.

DEAR SIR: I beg to advice you that we arrived at Havre Pilot station on May 26th at 8:20 P. M. and at the C. I. M. dock at Havre 11:40 p. m. Average speed between Pilot stations was 10.87 knots, and fuel consumption 193 BBls per 24 hours.

We had very good passage over, smooth sea all the way. It seems to me that this ship ought to do better than that in such ideal weather conditions, but that is about the best that we can get out of her. Our passengers seems to be satisfied, at least they did'nt say anything to me. As it is now we can't give much service to passengers, if we do, the Stewards departments over time will be lot. Anyhow this Stewards department don't know how to serve people. Our Cooks claiming some over time every day, they say that they can't get they work done in 9 hours.

There is nothing much I can do about it now, if I try to do anything, the whole gang may walk out on me. If I had Steward that knows his job, I think thing would be different. 2nd Cook claims that if he don't start the fire in the stove at 5:00 a. m., they can't get the Breakfast ready by 7:30 a. m. The stove is old and don't work so good, but I think if they wanted to they could get their work done alright.

Mr. Hansen is doing fine, he is really good man and other mates is doing good as can be expected from New York mates. Everything has been going on very smoothly on board here sofar.

I had awful time with my leg first 10 days after leaving Tampa, but it is getting much better now and will be all well by the time I get back there again.

Please find herewith inclosed two copies of Consular note of protest, will forward all daily reports under separate cover.

Yours very respectfully,

F. O. LUND,
Master S. S. Bienville.

U. S. GOVERNMENT PRINTING OFFICE: 1933

FILE COPY

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CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 193

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

Vs.

WATERMAN STEAMSHIP CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF AND ARGUMENT OF WATERMAN STEAMSHIP CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

GESSNER T. McCORVEY,
Attorney for Waterman Steamship Corporation,
Respondent.

C. A. L. JOHNSTONE, JR.,
and
McCORVEY, McLEOD, TURNER & ROGERS,
of Counsel.

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On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF AND ARGUMENT OF WATERMAN STEAMSHIP CORPORATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

The National Labor Relations Board has filed in this Court a petition praying that a writ of certiorari be issued to the United States Circuit Court of Appeals for the Fifth Circuit to review the judgment of that Court which was entered on April 11th, 1939, the opinion of the Circuit Court of Appeals being reported in 103 Fed. (2d) 157 (R. 537-541).

The case was presented to the Circuit Court of Appeals on a petition of the Waterman Steamship Corporation seeking the vacation of what it considered

a most unjust and unfounded order issued by the National Labor Relations Board in which the said Board had entered the usual order to cease and desist and post notices; ordered the Waterman Steamship Corporation to offer re-employment to some forty-three members of the crews of the S. S. "Bienville" and S. S. "Fairland," two of its ships, and to C. J. O'Connor, the Second Assistant Engineer of the S. S. "Azalea City," without prejudice to their seniority and other rights and privileges; ordered it to make whole the members of such crews for losses of pay and reasonable value of maintenance on shipboard since the termination in July, 1937, of their employment with the Waterman Steamship Corporation, such items aggregating up to the present time something in excess of $200,000.00; and also ordered the Waterman Steamship Corporation to issue passes to representatives of the National Maritime Union of America (hereinafter referred to as N. M. U.), an affiliate of the Committee for Industrial Organization (hereinafter referred to as C. I. O.), (R. 103-119).

From a careful examination of the petition and the supporting brief filed in this Court by counsel for the National Labor Relations Board we are at a loss to understand on what theory our able opponents contend that this is a case in which the Supreme Court will undertake to review on a writ of certiorari a decision of a United States Circuit Court of Appeals. Under the provisions of Rule 38 of this Court, it is expressly stated that a review on a writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. While Sub-division 5 of Rule 38 of this Court does not control nor fully measure the Court's discretion, yet this rule provides that the character of reasons which would be considered, where the petition seeks to review a judgment entered by a Circuit Court of Appeals, are cases where a Circuit Court of Appeals has rendered a decision

in conflict with the decision of another Circuit Court of Appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of law which has not been, but should be, settled by this Court; or has decided a federal question in a way probably in conflict with applicable decisions of this Court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower Court, as to call for an exercise of this Court's power of supervision.

Certainly, there is nothing in the petition praying for a writ of certiorari now presented to this Court, or in the brief in support thereof, which remotely comes within any of the classes of cases above referred to under Rule 38 of this Court and the position of our able opponents seems to be that this Court should undertake to review this voluminous Record and, after examining all of the evidence therein set forth, determine whether or not the decision of the Circuit Court of Appeals was proper.

Inasmuch as counsel for the National Labor Relations Board do not bring their petition for writ of certiorari within any of the classes of cases which this Court will review on petition for a writ of certiorari, it would hardly seem necessary for us to reply at any great length to the petition for writ of certiorari and brief in support thereof filed herein. However, the opinion of the Circuit Court of Appeals is so eminently correct, under the facts presented by the Record, that we wish to call this Court's attention to some of the more important phases of the testimony on which the Waterman Steamship Corporation relied and on which the Circuit Court of Appeals based its opinion. Especially do we consider this necessary in view of some erroneous statements contained in brief filed by petitioner in this Court, in the making of which state-

ments our learned opponents have evidently entirely overlooked certain portions of the Record which were considered by the Circuit Court of Appeals in rendering its decision.

The Record in the Court below with numerous Exhibits was most voluminous, consisting of more than 1,000 pages. The Circuit Court of Appeals made a very full, careful and exhaustive study and consideration of the entire Record and we could not better state the situation shown by the Record than to here summarize the opinion of the Court of Appeals which found: That the Waterman Steamship Corporation has been dealing fairly with the labor unions; that where a majority of its employees in a particular class were members of a union it contracted to employ men who belonged to that union regardless of the union's affiliation; that it has not organized a company union, nor sponsored any certain union, nor discharged its employees for union activity or affiliation; that it entered into a contract and gave preference of employment, in selecting the unlicensed personnel of its crews, to members of the International Seamen's Union of America (hereinafter referred to as I. S. U), an affiliate of the American Federation of Labor (hereinafter referred to as A. F. of L.), for the reason that a majority of its employees of this class were members of that union; that such preferential employment contracts are valid; that the evidence is virtually without dispute that repairs on the two steamships in question had been planned by the company long before the crews changed their membership from one union to another; that when the ships were laid up for repairs the crews were discharged only for reasons of economy; that there was no effort on the part of the Waterman Steamship Corporation to make war on the unions; that the evidence does not even point in that direction; that some of the members of the crews were employed in the shops while the ships were laid up; that the engineers of the Waterman Steamship

Corporation were members of the Marine Engineers Beneficial Association (hereinafter referred to as M. E. B. A.), a C. I. O. affiliate, and that no effort was made to discharge them; that notwithstanding such C. I. O. affiliation it may be concluded that all of these engineers, with the exception of O'Connor, were still working for the Waterman Corporation; that the finding of the National Labor Relations Board that the ships were laid up as an excuse to get rid of the men is based on suspicion and not on the evidence; that when the time came to employ crews for the S. S. "Bienville" and S. S. "Fairland," after they had been repaired, the Waterman Steamship Corporation was bound under its contract to select its unlicensed employees from the membership of the I. S. U.; that the National Labor Relations Board, by its order, would penalize the Waterman Corporation for keeping its contract; that the attitude of the Waterman Corporation in refusing to issue passes to representatives of either union to come aboard its vessels to organize and recruit members, is clearly shown by the order addressed to the Masters of all vessels in July, 1937, instructing such Masters that the Steamship Company would not allow any delegates from either union to board its vessels for the purpose of soliciting memberships; that under the provisions of the contract with the I. S. U. their representatives were granted passes to go aboard vessels to collect dues from its members but both unions were alike denied passes to solicit memberships; that the trouble was not of the making of the Waterman Steamship Corporation; that the controversy emanated from a fight between two unions and nothing more; that as they fought to oust each other the Waterman Steamship Corporation became the victim; that one may conclude from the evidence that if the union representatives were permitted to go aboard the ships to organize and recruit members, business and shipping in all probability would be shunted aside while the rival unions staged a battle for supremacy; that the Water-

man Corporation was within its rights when it forbade the representatives of either union to come aboard its vessels for the purpose of soliciting memberships; that it played no favorite and the National Labor Relations Board erred in its order in this respect; that while the National Labor Relations Board has wide discretion in administering the Wagner Act, yet in so doing it must deal fairly with all parties; that it has the duty to decide the case before it on all of the evidence and should not arbitrarily cast away all the undisputed evidence that is inconsistent with its findings; that if its findings are supported by substantial evidence they should stand but the test of substantial evidence, however, is not satisfied by evidence which merely creates a suspicion; that the special finding of the National Labor Relations Board as to Edmund J. Pelletier, Steward of the S. S. "Bienville," is not supported by the evidence as the Record shows without dispute that the Captain of the S. S. "Bienville" had written from a foreign port to the Port Captain at Mobile, complaining of the way in which Pelletier was running the Steward's Department aboard ship; that the Waterman Corporation had a right to discharge Pelletier for cause; that all employers have wide latitude in employing and discharging employees, the only requirement of the National Labor Relations Act being that the employee must not be discharged on account of union activities and union affiliations; that the evidence shows that there is no merit in the Board's finding that C. J. O'Connor, Second Assistant Engineer on the S. S. "Azalea City," was discharged for his participation in a collective protest and for holding membership in the M. E. B. A.; that O'Connor was not discharged; that the Port Captain did not discharge him but directed him to take a vacation when he arrived in Mobile, which he did; that the evidence tends to show that O'Connor was in the habit of taking voluntary vacations at frequent intervals; that O'Connor has never returned and formally made request to be placed

on active duty; that he is entitled to be paid for the number of days that the Company allows and grants for vacation to its employees in his class, and upon application he is also entitled, if he can satisfactorily qualify, to be offered re-instatement to his former position; and that the petition of the Waterman Steamship Corporation should be granted and the order of the National Labor Relations Board be vacated except as modified and approved as to C. J. O'Connor (R. 537-541).

> Waterman Steamship Corporation vs. National Labor Relations Board, et al., 103 Fed. (2d) 157.

As above suggested, this opinion contains about as concise and clear-cut a statement of what the Record shows as could be given.

We doubt if there has ever been a complaint filed under the Wagner Act against a Steamship Corporation, or against any other employer of labor, which had as little justification as the complaint filed in this case. The Waterman Steamship Corporation has at no time and under no circumstances been an employer corporation which fought labor unions. As well pointed out in the very able opinion of Circuit Judge McCord, the controversy in the instant case was not really a controversy between the Waterman Steamship Corporation and the C. I. O. affiliate known as the National Maritime Union (N. M. U.), but the controversy was a fight which had been waged for some time between the International Seamen's Union of America, an affiliate of the American Federation of Labor, and the National Maritime Union, an affiliate of the Committee for Industrial Organization, to gain supremacy in the selection of the unlicensed personnel of Steamship Companies.

The Record shows without conflict that at all times the Waterman Steamship Corporation had recognized as the appropriate bargaining agency that union to which a majority of its employees in the respective departments belonged. For example, the Waterman Steamship Corporation made a contract with the I. S. U., an A. F. of L. affiliate, as the appropriate bargaining agency for its unlicensed personnel and the Record shows without conflict that this particular group of employees of the Waterman Steamship Corporation was 100% members of the International Seamen's Union of America. The Trial Examiner in his Intermediate Report expressly found that this contract was valid because all of the employees in that particular group belonged to the I. S. U. at the time the contract was made.

We quote from the Trial Examiner's Report as follows:

> "Indeed, the evidence with respect to at least two of the ships involved in the present proceedings, namely the "Bienville" and the "Fairland", shows that their crews belonged one hundred per cent to the I. S. U. in the middle of 1937. The contract of March 9th, 1937, was thus valid in its inception. It was made as a group contract which was signed by many other shipping companies in addition to the respondent." (R. 51).

As a matter of fact, the Trial Examiner could have gone further and stated that the Record shows without dispute that as early as March, 1936, the unlicensed employees of all of the crews on all of the Waterman Steamship Corporation's vessels were one hundred per cent I. S. U. (R. 305).

In the case of Peninsular & Occidental Steamship Company vs. National Labor Relations Board, 98 F.

(2d) 411, in which certiorari was denied by this Court, 305 U. S. 653, 83 L. Ed. 224, Judge Rufus Foster, the Presiding Judge of the Circuit Court of Appeals for the Fifth Circuit, in discussing the situation presented by the contract there under consideration, which is identical in form with the contract involved in the case at bar, said:

> "The right of an employer to make a contract with a labor union and to require membership therein as a condition of employment is expressly recognized by the Act. 29 U. S. C. A. Sec. 158 (3). The contract with the International Seamen's Union was a valid, existing agreement at the time the crews were discharged and no other bargaining unit had been designated. Under its terms the company was obliged to give its members preference in reemployment. * * * No other bargaining agent having been designated by the Board, in employing new crews the company was bound by its contract to give preference to the International Seamen's Union. Had it not done so it would have been subject to charges for violating the Act."
>
> Peninsular & Occidental S. S. Co. vs. N. L. R. B. (5th C. C. A.), 98 Fed. (2d) 411 (414-15).

The position of the Waterman Steamship Corporation in regard to the contract which it had with the I. S. U. is very clearly stated by its Executive Vice-President, Captain N. Nicolson, as follows:

> "As far as we are concerned, and aside from the contract which we have with the I. S. U., it is immaterial to us what union a man belongs to. It is not the policy of the Waterman Steamship Corporation to break or to violate contracts and we are not going to break any contracts with labor organizations." (R. 288).

Furthermore, Captain Nicolson testified that neither he nor any officer nor anyone else representing the Waterman Steamship Corporation had at any time tried to persuade any of the seamen to join one union or another, nor had he or any officer or anyone else acting for the Waterman Corporation at any time tried to interfere with the men on the ships or restrain them or coerce them in any manner as to what union they should belong to (R. 295). Captain Nicolson also testified that it has been entirely immaterial to the Waterman Steamship Corporation as to what unions, societies or organizations its seamen belonged to so long as his Company was not required to violate any of its contracts (R. 295), the answer of the Waterman Corporation to the amended complaint averring:

> "That so far as it is concerned, it is entirely immaterial who becomes members of the National Maritime Union of America and who becomes members of the International Seamen's Union of America, so long as this respondent can obtain capable, honest, industrious, faithful, and loyal employees without violating its contract with the International Seamen's Union of America. This respondent has at all times required, and will in the future require, such service from all of its employees." (R. 38).

When it came to the engineers, the Waterman Steamship Corporation found that the majority of its engineers, in fact all of its engineers, were members of the Marine Engineers Beneficial Association (M. E. B. A.), an affiliate of the C. I. O., and the testimony of Captain N. Nicolson, Executive Vice-President of Waterman Steamship Corporation, is to the effect that as soon as the M. E. B. A. proved that they represented a majority of the engineers on the Waterman Corporation's ships his Company immediately met with them as the collective bargaining

agency for the engineers and made a contract with them in accordance with the Wagner Act (R. 295).

And so the Record goes on showing without conflict or exception that at all times the Waterman Steamship Corporation has recognized and dealt with unions, playing no favorites as between the A. F. of L. affiliates and the C. I. O. affiliates, and always recognizing as the appropriate bargaining agency that union to which the majority of its employees in its respective departments belonged. It is for this reason that we make the above statement that probably no complaint has ever been instituted by the National Labor Relations Board which was more totally lacking in merit than this proceeding instituted against the Waterman Steamship Corporation.

No doubt the fact that the Waterman Steamship Corporation has dealt so fairly with its employees and has been so careful to recognize as the appropriate bargaining agency that union to which a majority of its employees in each department belongs is what enables the Waterman Steamship Corporation to make the very remarkable record testified to by Captain N. Nicolson, the Executive Vice-President of the Waterman Steamship Corporation, in the following language:

> "I might add that the Waterman Steamship Corporation is the only steamship company in the United States that has not had a delayed sailing of their vessels, or had any trouble within their vessels during the past three years. Every one of the Waterman Steamship Corporation's vessels on sailing schedule went out with first-class, competent, crews on the boat, it being the only shipping company in the United States which can boast of that record. All of the crews were Union crews." (I. S. U., affiliate of A. F. of L.) (R. 296).

What further proof would any one need of the fair dealing of the Waterman Steamship Corporation with its employees and the fact that that Company had faithfully lived up to all of its contracts with its employees?

The contract which the Waterman Steamship Corporation entered into with the International Seamen's Union of America is what is known as a preferential employment contract and Section 1 of Article II of this contract provided as follows:

> "Section 1. It is understood and agreed that as vacancies occur, members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the respective positions; provided, however, that this Section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt re-shipment, or absence due to illness or accident." (R. 36).

It will be recalled that the Record shows without question that when these seamen shipped on one of the Waterman Steamship Corporation vessels they signed up shipping articles for one voyage and one voyage only and upon their return they were duly and legally signed off before the United States Shipping Commissioner. Then when the vessel was ready to sail again and the Waterman Steamship Corporation was faced with the proposition of providing a crew, this company, under its preferential employment contract with the I. S. U., was compelled to employ in its unlicensed personnel only members of the I. S. U. This was what was done by the Waterman Steamship Corporation and yet the National Labor Relations Board, to use the language found in the opinion rendered by the United States Circuit Court of Appeals for

the Fifth Circuit, "by its order would penalize the company (Waterman Steamship Corporation) for keeping this contract."

Waterman Steamship Corporation vs. N. L. R. B., 103 Fed. (2d) 157 (159).

In view of the consistent record of the Waterman Steamship Corporation of recognizing as the appropriate bargaining agency that union to which a majority of its employees in each department or class belonged, and in view of the fact that the Waterman Steamship Corporation without discrimination has contracted with A. F. of L. affiliates and with C. I. O. affiliates, depending solely upon which union the majority of its employees in each department were members of, and in view of the fact that there is nothing in the Record showing that the Waterman Steamship Corporation has the slightest interest in any of the unions further than a desire to abide by its contracts made in good faith with the union representing a majority of its employees in each department, it is difficult for us to understand how it can be seriously asserted, as contended by our able opponents, "that the lay-ups were but a pretext for the elimination of the N. M. U. crews." The Waterman Steamship Corporation had nothing to gain by getting rid of the N. M. U. crews and was not interested in any manner as to which union had the largest membership among its employees. All that the Waterman Steamship Corporation was interested in was in making a contract with the appropriate bargaining agency representing a majority of its employees in each class and then living up to the contract so made.

Our opponents refer several times in their brief to the "mass discharges of the crews." As a matter of fact, under the existing shipping articles the crew of a steamship which is signed up for one voyage before the United States Shipping Commissioner is discharged

upon the termination of that voyage when the ship returns to the port of discharge and the seamen "sign off." The members of the crew are paid off before the United States Shipping Commissioner and are no longer employees of the Steamship Company. This may be termed a "mass discharge of the crew" but we don't think that this expression can be used in the sense that it is used in our opponents' brief. What happened was that when these seamen were discharged before the United States Shipping Commissioner then the only way in which they could be re-employed by the Waterman Steamship Corporation was for them to belong to that union with which the Waterman Steamship Corporation had a preferential employment contract, viz., the International Seamen's Union of America. Some of the men who had joined the N. M. U. re-joined the I. S. U. and were able to ship on the vessels of the Waterman Steamship Corporation while other members did not re-join the I. S. U. but continued their membership in the N. M. U. and under its contract with the I. S. U. the Waterman Steamship Corporation could not offer employment to these N. M. U. members as it had to give preference of employment to members of the union with which it had a contract. Furthermore, our able opponents refer in their brief to "illegal discharge of employees." There has been no illegal discharge of employees in this case, as above suggested, the only discharge of any seamen was the discharge by operation of law under the statutes providing for the termination of the shipping articles. The only complaint that these seamen could possibly have against the Waterman Steamship Corporation would be that that company did not re-employ them when these ships were ready to sail. However, as above explained, the Waterman Steamship Corporation could not employ them unless they were members of the union with which the Waterman Steamship Corporation had a contract and to whose members the Waterman Steamship Corporation had contracted to give preference of employment.

The Record shows that a few of the seamen on these two vessels did not change their union affiliation from the I. S. U. to the N. M. U., but when the members of these two crews were paid off and signed off before the United States Shipping Commissioner the I. S. U. members and the N. M. U. members were all treated exactly alike and the employment of all of them ceased as a matter of law. The only question then presented was as to which of these employees the Waterman Steamship Corporation, under its contract, could re-employ when their ships were ready to sail.

There is no merit whatsoever in the contention that the crews of the S. S. "Bienville" and the S. S. "Fairland" were discharged because they had joined the N. M. U. Captain Nicolson, in testifying relative to this situation, cleared up any suspicion on this line by testifying to the effect that the men changing their union affiliation to the N. M. U. had nothing to do with the tying up of the ships as conceivably the Waterman Steamship Corporation was not going to tie up any vessel as long as it could earn money with her (R. 288). There is nothing in the Record to support the contention now made by counsel for the National Labor Relations Board to the effect that the repairing of these two ships was an **"afterthought"** and something that was decided upon by the Waterman Steamship Corporation subsequent to the time that most of the members of the crews on these two vessels changed their union affiliation from the I. S. U. to the N. M. U. On the contrary, the Record shows without dispute that long prior to the time that the S. S. "Bienville" returned from its trip to Havre, France, and touched at Tampa on its way to Mobile, and long prior to the time that the S. S. "Fairland" returned from Porto Rico and touched at Tampa, on its return to Mobile, plans had been made to have this very extensive work done on the S. S. "Bienville," when she reached Mobile at the expiration of this voyage, and plans had also been made to

have the S. S. "Fairland" put on dry dock in order to have its tail shaft pulled and other work done.

In the first place, there would not have to be any tying up of these vessels in order for the Waterman Steamship Corporation to be able to "lay off the crews." All of the members of the crews, as above suggested, were automatically laid off as a matter of law when their period of employment terminated according to the shipping articles signed by them, at the time their voyage ended, and not by any action of the Waterman Steamship Corporation. Their contract terminated and they were no longer employees of the Waterman Steamship Corporation and the only way they could again become employees of the Waterman Steamship Corporation would be by entering into a new contract with that Company for some future voyage.

There is not one scintilla of evidence in the Record disputing the very clear and concise testimony of the Company's Port Captain, Clarence Reed, of Executive Vice-President Captain Norman Nicolson, and of Walter Ingram, the Company's Assistant Port Engineer, showing beyond the shadow of a doubt that long before the Waterman Steamship Corporation knew that any of the members of either of these crews had joined the N. M. U., plans had been made for the S. S. "Bienville" and the S. S. "Fairland" to be tied up for repairs, dry docking, etc., upon the termination of the particular voyages in question. The conclusion of the Board that these vessels were tied up at the end of these particular voyages on account of what had happened on the voyages finds no support in the Record and such conclusion is only supported by suspicion.

It was the duty of Captain Clarence Reed, the Port Captain, to keep track of the various vessels and their schedules. He kept the records in the premises and was the one whose testimony would necessarily

be more accurate than the testimony of the other witnesses who were merely relying on their recollection as to what had happened some months previously. All dates, schedules, plans, etc., are very clearly set forth in the chart or schedule identified by Captain Reed which was introduced in evidence and forms a part of the Record in this case and is marked for identification Respondent's Exhibit No. 24. Captain Reed testified that before the S. S. "Fairland" left Mobile he knew the ship had to be dry docked on her arrival back in her home port; that this was for the purpose of having her tail shaft drawn for inspection which was due about July 10th; and that the schedule showed that the S. S. "Fairland" was dry docked on October 28th, 1936, and the next dry docking was due July 28th, 1937, because the insurance regulations require dry docking every nine months and insurance policies could not be obtained unless this requirement was complied with. Captain Reed further testified that when a ship comes into port near the expiration of the nine months' period for dry docking and where this nine months' period would expire while she was at sea, if she went on another voyage, it is customary to put her on dry dock before going out on this next voyage. Then, too, in the column of this chart or schedule (Respondent's Exhibit No. 24) headed "Tail Shaft Drawn" appears the date July 10th, 1934, and in the column headed "Tail Shaft Due Drawn" appears the date July 10th, 1937. Captain Reed testified that the laws of the Bureau of Marine Inspection and Navigation require these tail shafts to be drawn once every three years for inspection and that the three years would expire on July 10th, 1937. The testimony of Captain Reed is further to the effect that this chart or schedule showing the times at which the various vessels belonging to the fleet of the Waterman Steamship Corporation must be dry docked for inspection and for having tail shafts drawn was kept under the glass top on his desk so as to keep him posted on these dates and as early as March, 1937, when he became

Port Captain, he knew that this schedule would have to be carried out. Consequently, we respectfully submit that with documentary evidence of this kind it is useless for our able opponents to be contending that some sudden decision was made to have this ship put on dry dock and to contend that this was done just because of a change in some of the members of the crew from an I. S. U. affiliation to an N. M. U. affiliation.

Captain Reed's testimony is equally conclusive as to the pre-arrangement to have work done on S. S. "Bienville." He issued to all departments a statement relative to the S. S. "Bienville" showing that she was due to arrive in Tampa on July 1st and from there would proceed to Pensacola and Mobile and that following completion of discharge of cargo at Mobile would go on an inactive status for a period of about twenty days, this order having been issued before Captain Reed ever heard of any N. M. U. activity in Tampa. Attached to this statement issued to all departments was a "Sailing Schedule, April through August, 1937" and relative to the S. S. "Bienville" this sailing schedule showed that the position of the S. S. "Bienville" in the second half of July, 1937, was "Repair." This schedule was certainly made up as early as April, 1937, and shows a contemplated lay-up of the S. S. "Bienville" from July 7th to July 30th,—twenty-three days. This sailing schedule or chart is in evidence as Respondent's Exhibit No. 25. The testimony of Captain Reed, which is in much detail, will be found on pages 472-476 of the Record.

Captain N. Nicolson, the Executive Vice-President of the Waterman Corporation, also testified fully relative to the pre-arranged plans to tie up these two ships and showed conclusively that the ships were not tied up as a result of a majority of the crews having joined the N. M. U. In brief for opponents

much stress is laid on the fact that there was some inconsistency in the testimony of Captain Nicolson as to whether the steel for the repair work was ordered for the S. S. "Bienville" or for a sister ship, the "Azalea City." Captain Nicolson testified that it might be that some of the steel in question was ordered for work on the S. S. "Azalea City." Of course, it is impossible for a witness such as Captain Nicolson, having general supervision of over thirty ships, to be able to state, in the absence of written records, with any degree of certainty just what was done and what was planned to be done with each ship for each week during the preceding year. Consequently, in order to have accurate testimony on such subjects, it was necessary to refer to the written records which were kept by Captain Reed. The testimony of Captain Nicolson on this proposition will be found in the Record on pages 287-288. The repairs done on the S. S. "Bienville" were quite extensive.

We respectfully submit to the Court that the Circuit Court of Appeals for the Fifth Circuit was entirely correct when it took the position that the test of substantial evidence was not satisfied by evidence which merely created a suspicion. The National Labor Relations Board tried to draw the conclusion from the testimony of the various witnesses that, for some unexplained reason, the Waterman Steamship Corporation desired to get rid of seamen who belonged to the N. M. U. and that in order to accomplish this purpose the Waterman Steamship Corporation deliberately tied up two of its vessels, with the attendant loss of revenue, because it had found that a majority of the members of the crews on these two vessels had severed their connections with the I. S. U. and joined the N. M. U. The fact that these two vessels were tied up upon reaching Mobile, after such change in union affiliation, is used as a basis for this suspicion. The above mentioned documentary evidence presented at the hearing showed conclusively that long prior to the time that

the two steamships in question arrived in Mobile, and long before any of the crew of either ship had changed their union affiliation, plans had been made to have these ships laid up for repair work and checking over. This was evidence of a most **substantial** kind, fully established by documentary proof. It was this kind of **substantial** evidence on which the Circuit Court of Appeals based its decision and that Court refused to be led astray by mere suspicions that the Waterman Steamship Corporation was tying up these two vessels for the purpose of getting rid of crews which had joined the N. M. U. It was such inferences and suspicions, as above suggested, on which the National Labor Relations Board based its order, which caused the Circuit Court of Appeals to hold that the order of the Board must be based upon **substantial** evidence and not merely upon suspicion. This conclusion of the Circuit Court of Appeals is absolutely sound and we submit could not be seriously controverted.

> "We agree that the statute, in providing that 'the findings of the Board as to the facts, if supported by evidence, shall be conclusive,' means supported by substantial evidence. Washington, V. & M. Coach Co. v. National Labor Relations Bd. 301 U. S. 142, 147, 81 L. Ed. 965, 970, 57 S. Ct. 648. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Appalachian Electric Power Co. v. National Labor Relations Bd. (C. C. A. 4th) 93 F. (2d) 985, 989; National Labor Relations Bd. v. Thompson Products (C. C. A. 6th) 97 F. (2d) 13, 15; Ballston-Stillwater Knitting Co. v. National Labor Relations Bd. (C. C. A. 2d) 98 F. (2d) 758, 760."
>
> Consolidated Edison Co. v. N. L. R. B., 305 U. S. 197, 83 L. Ed. 131 (140).

"It is the duty of the Board to decide the case before it on all the evidence. **It is not at liberty to rely upon part of the evidence in support of its findings and put aside all other undisputed evidence.** * * * On all the evidence in the case, the company, in the circumstances shown, was not guilty of violating the National Labor Relations Act. **The findings of the Board are not supported by evidence within the meaning of the law.** It follows that the petition of the company to annul and set aside the order must be granted and the application of the Board to enforce the order must be denied."

Peninsular & Occidental S. S. Co. v. N. L. R. B. (5th C. C. A.), 98 Fed. (2d) 411 (415-16). Certiorari denied, 305 U. S. 653, 83 L. Ed. 224.

"The conclusion is irresistible that, unless supported by relevant and material evidence, the findings of the Board as to the facts are not conclusive."

National Labor Relations Board v. Bell Oil & Gas Co. (5th C. C. A.), 98 Fed. (2d) 406 (410).

"It is suggested that this court should accept the findings of the Board; that contradictions, inconsistencies, and erroneous inferences are immune from criticism or attack by Section 10(e) of the Act, 49 Stat. 453, 29 U. S. C. A. Sec. 160(e), which provides that 'the findings of the Board as to the facts, if supported by evidence, shall be conclusive.' But the courts have not construed this language as compelling the acceptance of findings arrived at by accepting part of the evidence and totally disregarding other convincing evidence."

National Labor Relations Board v. Union Pacific Stages (9th C. C. A.), 99 Fed. (2d) 153 (177).

Probably the most unfounded claim made by counsel for petitioner is the complaint against Waterman Steamship Corporation to the effect that it issued passes to representatives of the I. S. U. and refused to issue passes to representatives of the N. M. U. The Waterman Corporation had a contract with the I. S. U. providing that authorized representatives of the I. S. U. should have the right to board the Waterman ships, subject to regulations prescribed by the owners, for the purpose of consulting with the seamen employed thereon, but the I. S. U. was required to take out insurance to protect the Steamship Owner against any claim, loss, damage or liability for any loss of life or injury, occurring to a representative of the I. S. U. while on board a vessel of the Steamship Company.

After elections were ordered by the National Labor Relations Board to determine whether the I. S. U., or the N. M. U. should represent the unlicensed members of the crews of the Waterman Steamship Corporation in collective bargaining, the Waterman Steamship Corporation gave written notice to the masters of all its vessels that in view of the fact that these elections had been ordered the Waterman Steamship Corporation had decided it would not allow any delegates from either union to board its vessels for the purpose of soliciting memberships. In addition to notifying all of its masters to this effect, the Waterman Steamship Corporation also notified, in writing, the Agent of the I. S. U. to the same effect. As a matter of fact, the only purpose for which representatives of the I. S. U. were allowed to go on board the ships of the Waterman Steamship Corporation was for the purpose of collecting dues.

The testimony relative to the action of the Waterman Steamship Corporation in the matter of the issuance of passes is not disputed, and so long as both unions were treated alike there has been no discriminatory practice.

The representatives of the N. M. U., as alleged in the complaint and as testified to by the witnesses, did not desire to go on board the Waterman Steamship Corporation's ships for any other purpose than to solicit membership in the N. M. U. The only complaint against the Waterman Steamship Corporation in this respect is that it refused to issue passes to the representatives of the N. M. U. to board its ships for the purpose of soliciting membership in the N. M. U. So long as the Waterman Steamship Corporation also refused to permit I. S. U. representatives to board its ships for the purpose of soliciting membership, the two unions were treated alike.

The Board stated in its decision that the evidence does not show that the respondent ever made any attempt to ascertain whether or not the I. S. U. was observing its instructions against solicitation. In the first place, we respectfully submit that we must not assume, in the absence of any proof to the contrary, that the representatives of the I. S. U., when they boarded the ships of the Waterman Company, did anything more than they were authorized to do by the limited authority granted to them by the Waterman Steamship Corporation. However, inasmuch as the crews of the Waterman Steamship Corporation were one hundred per cent I. S. U., there was, of course, no necessity for representatives of the I. S. U. to be boarding ships of the Waterman Steamship Corporation for the purpose of soliciting membership in the I. S. U. If it be contended that the Waterman Steamship Corporation must assume that the representatives of the I. S. U. were going to violate their agreement and after once getting on

board these ships would undertake to solicit membership in their union, then we would have that Corporation assuming that these representatives of the I. S. U. would be doing a useless, needless and almost an absurd thing, because all of the members of these crews were already members of the I. S. U. and you certainly don't have to solicit a man to join a union when that man is already a member of such union.

A true and correct copy of the letter which the Waterman Steamship Corporation issued to the masters of all of its vessels relative to denying passes to representatives of either union for the purpose of soliciting membership therein, as well as a copy of the letter which the Waterman Steamship Corporation addressed to Mr. William Ross, the Agent for the International Seamen's Union, on the same subject, and the original letter written to Waterman Steamship Corporation by Mr. William Ross in reply, were introduced in evidence and form a part of the Record as respondent's exhibits Nos. 16, 17, and 18, respectively (R. 298-299).

For the convenience of the Court we will here quote the letter which Executive Vice-President Nicolson, of the Waterman Steamship Corporation, addressed to the Masters of all vessels, under date of July 13th, 1937.

"TO ALL MASTERS:—

In view of the fact that the National Labor Relations Board are now holding elections to determine whether the N. M. U. or the I. S. U. should represent the unlicensed members of our crews in collective bargaining, we have decided that we will not allow any delegates from either union to board our vessels for the purpose of soliciting memberships.

(Signed) N. Nicolson,
Executive Vice-President." (R. 298).

We respectively submit that in view of this Record it cannot be seriously contended that the Waterman Steamship Corporation acted in any manner improperly or unfairly in handling the issuance of passes to board its ships.

At the conclusion of the taking of all the testimony before the Trial Examiner the Waterman Steamship Corporation filed a written motion requesting that the complaint, as last amended, be dismissed, this motion being in words and figures as follows:

> "Now comes the Waterman Steamship Corporation, the respondent in the above styled cause, and all the evidence having been introduced and all parties having rested and the evidence showing without dispute that the Waterman Steamship Corporation, under its contract with the International Seamen's Union of America, an affiliate of the American Federation of Labor, has employed on its ships members of the said International Seamen's Union of America, and the record further disclosing without controversy that the Waterman Steamship Corporation, during the existence of its contract with the said International Seamen's Union of America, has never been delayed in any manner whatsoever in the sailing of any of its large fleet of vessels, and the National Labor Relations Act, under which this proceeding is instituted, being termed 'An Act to diminish the causes of labor disputes burdening or obstructing interstate or foreign commerce, etc.', and it now appearing conclusively from the evidence that neither interstate nor foreign commerce has ever been in any manner burdened or obstructed by the action of the Waterman Steamship Corporation, the respondent, now complained of, the said Waterman Steamship Corporation now moves that the complaint as last amended filed against it in this pro-

ceeding be dismissed on the following separate and several grounds:"

Here follow the various grounds on which the motion is based such as that the evidence fails to show respondent had been guilty of any violation of the Wagner Act; or been guilty of any unfair labor practices; or had interfered with, restrained or coerced employees in the exercise of their rights; or encouraged or discouraged membership in any labor organization; because respondent was bound by a valid contract with the I. S. U. to give preference of employment to its members; and because by refusing to grant passes to go on board its ships to N. M. U. organizers respondent was not interfering with, restraining or coercing employees in the exercise of their rights (R. 528-529).

While this motion was denied by the Trial Examiner and by the National Labor Relations Board, yet the Circuit Court of Appeals for the Fifth Circuit held, in effect, that this motion should have been granted and set aside and vacated the order of the National Labor Relations Board.

It has repeatedly been held by this and other Courts that the National Labor Relations Board is not empowered to substitute its judgment for that of the employer in the conduct of its business and the Wagner Act did not deprive the employer of its right to select or dismiss its employees for any cause except where the employee was actually discriminated against because of his union activities or affiliations. In other words, the Act does not vest in the Labor Relations Board any managerial authority.

N. L. R. B. vs. Jones & Laughlin Steel Corporation, 301 U. S. 1 (45), 81 L. Ed. 893 (916).
Associated Press vs. N. L. R. B., 301 U. S. 103 (132), 81 L. Ed. 953 (960-1).

Peninsular & Occidental S. S. Co. vs. N. L. R. B. (5th C. C. A.), 98 Fed. (2d) 411 (415).
Certiorari denied, 305 U. S. 653, 83 L. Ed. 224.
N. L. R. B. vs. Union Pacific Stages (9th C. C. A.), 99 Fed. (2d) 153 (177).

A very important proposition disclosed by the Record which the able counsel for the National Relations Board do not touch upon in their brief and argument is the fact that after the Waterman Steamship Corporation made the necessary repairs and checking over of the two vessels in question and these vessels were ready to go to sea, and the Waterman Steamship Corporation was then confronted with the proposition of obtaining crews for these two ships, it was warned by William Ross, the Business Agent for the International Seamen's Union of America, or its successor, the Seamen's Reorganization Committee of the American Federation of Labor, that if the Steamship Corporation violated the terms of its contract with the I. S. U., it would be subject to suit and that he would hold the Waterman Corporation for damages if they did not carry out their contract and give preference of employment to members of the International Seamen's Union of America. The testimony of Mr. Ross on this point will be found on page 506 of the Record. Captain Nicolson, the Executive Vice-President of Waterman Steamship Corporation, further testified that his company was threatened with suit by the International Seamen's Union if it failed to live up to this contract, the attorney for the International Seamen's Union of America having taken this matter up with the General Counsel of the Waterman Steamship Corporation and advised him that if the Waterman Corporation violated any terms of their contract, it would be subject to suit (R. 312).

In the opinion of Circuit Judge Foster in the Peninsular & Occidental Steamship Company case above referred to it is stated that under such a contract as

is involved in the case at bar not only was the employer bound by such contract to give preference of employment to members of the I. S. U. but if it failed to do so, it would be subject to charges for violating the Wagner Act.

There is one phase of the brief and argument filed by our able opponents which occurs to us as being quite unusual and that is the rather wholesale indictment by the attorneys for the Labor Board of the United States Circuit Court of Appeals for the Fifth Circuit. These attorneys state in their brief that their present petition for a writ of certiorari **does not rest solely upon the result of the decision of the Circuit Court of Appeals in the case at bar, but their petition is also grounded upon the apparently consistent failure of the Court below in the case at bar and in its other decisions rendered during the past two years to give effect to the provisions of the Act that the findings of the Labor Board as to the facts, if supported by evidence, shall be conclusive.** Our opponents then proceed to criticize a number of other dicisions of the United States Circuit Court of Appeals for the Fifth Circuit, including the Peninsular & Occidental Steamship Company case above referred to in which this Court denied the petition for a writ of certiorari, as above commented upon. We have carefully considered all of the cases referred to in brief of counsel for the Labor Board and we find that in these other cases our Circuit Court of Appeals held, and very properly so, that the findings of the Labor Board were not supported by substantial evidence. The kind of evidence relied upon by the Labor Board in the case at bar is a fair sample of the type of testimony which the Labor Board wishes to introduce and then claim that this is "**substantial evidence**" which supports and upholds its rulings.

In undertaking to ascertain just how our able opponents could seriously contend that the type of

evidence introduced before the Labor Board supported any such action as was ordered by that Board, it was interesting to note on page 11 of our opponents' printed brief the reference made to certain testimony followed by these words "'**together with the highly suspicious circumstances upon which it began,** supported the Board's finding that the lay-up was arranged for the purpose of facilitating the discharge of the crew because they joined the N. M. U." Here we have the attorneys for the National Labor Relations Board clearly intimating, and, in fact, **stating** that in their opinion support can be found for the order of the National Labor Relations Board from "**suspicious circumstances.**" This is just what the United States Circuit Court of Appeals for the Fifth Circuit held could not be done.

While in the case at bar this Court should not undertake to regulate the United States Circuit Court of Appeals for the Fifth Circuit for any errors it may have committed in other cases,—especially in such cases as the Peninsular & Occidental Steamship Company case in which this Court denied the petition for a writ of certiorari,—yet an examination of the opinions of that Court shows quite conclusively that after a very thorough and careful study of the Record in each of these cases the Circuit Court of Appeals reached a conclusion which was entirely proper under the evidence shown by the Record and there is no occasion whatever for this Court to now undertake to grant a writ of certiorari in the case at bar because of the contention made by counsel for the Labor Board that the United States Circuit Court of Appeals for the Fifth Circuit has in other cases failed to give effect to that provision of the Wagner Act providing that the findings of the Labor Board as to the facts, if supported by evidence, shall be conclusive.

CONCLUSION.

In conclusion, we wish to respectfully submit to the Court that the judgment of the United States Circuit Court of Appeals for the Fifth Circuit was in all respects proper; that there was no substantial evidence before the National Labor Relations Board to support the decision and order of that Board; that the United States Circuit Court of Appeals for the Fifth Circuit properly set aside and vacated the order of the National Labor Relations Board; that the petition for a writ of certiorari filed in this cause does not state a case in which a petition for a writ of certiorari to a United States Circuit Court of Appeals will be granted; and that the petition filed herein should be denied.

Respectfully submitted,

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Of Counsel.

I, Gessner T. McCorvey, do hereby certify that on this the 6th day of September, 1939, I forwarded, with postage prepaid, copies of the foregoing brief and argument to the National Labor Relations Board, Washington, D. C., to Golden W. Bell, Acting Solicitor General, Washington, D. C., to Charles Fahy, General Counsel, National Labor Relations Board, Washington, D. C., to William L. Standard, Attorney for the National Maritime Union of America, New York City, and to Charlton Ogburn, Attorney for the International Seamen's Union of America, New York City.

Executed this 6th day of September, 1939.

(Gessner T. McCorvey).

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 193

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

WATERMAN STEAMSHIP CORPORATION,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF AND ARGUMENT OF WATERMAN STEAMSHIP CORPORATION.

GESSNER T. McCORVEY,
Attorney for Waterman Steamship Corporation

C. A. L. JOHNSTONE, JR.,
and
McCORVEY, McLEOD, TURNER & ROGERS,
of Counsel.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 193

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

WATERMAN STEAMSHIP CORPORATION,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF AND ARGUMENT OF WATERMAN STEAMSHIP CORPORATION.

This Court granted the petition of National Labor Relations Board praying that a writ of certiorari be issued to the United States Circuit Court of Appeals for the Fifth Circuit to review the judgment of that Court which was entered on April 11th, 1939, the opinion of the Circuit Court of Appeals being reported in 103 Fed. (2d) 157 (R. 537-541).

The case was presented to the Circuit Court of Appeals on a petition of the Waterman Steamship Corporation seeking the vacation of what it considered a most unjust and unfounded order issued by the

National Labor Relations Board in which the said Board had entered the usual order to cease and desist and post notices; ordered the Waterman Steamship Corporation to offer re-employment to some forty-three members of the crews of the S. S. "Bienville" and S. S. "Fairland," two of its ships, and to C. J. O'Connor, the Second Assistant Engineer of the S. S. "Azalea City," without prejudice to their seniority and other rights and privileges; ordered it to make whole the members of such crews for losses of pay and reasonable value of maintenance on shipboard since the termination in July, 1937, of their employment with the Waterman Steamship Corporation, and also ordered the Waterman Steamship Corporation to issue passes to representatives of the National Maritime Union of America (hereinafter referred to as N. M. U.), an affiliate of the Committee for Industrial Organization (hereinafter referred to as C. I. O.), (R. 103-119).

The opinion of the Circuit Court of Appeals is so eminently correct, under the facts presented by the Record, that we wish to call this Court's attention to some of the more important phases of the testimony on which the Waterman Steamship Corporation relied and on which the Circuit Court of Appeals based its opinion. Especially do we consider this necessary in view of some very important portions of the Record not referred to in brief filed by petitioner in this Court.

The Record in the Court below with numerous Exhibits was most voluminous, consisting of more than 1,000 pages. The Circuit Court of Appeals made a very full, careful and exhaustive study and consideration of the entire Record and we could not better state the situation shown by the Record than to here summarize the opinion of the Court of Appeals which found: That the Waterman Steamship Corporation has been dealing fairly with the labor unions; that where a majority of its employees in a particular class

were members of a union it contracted to employ men who belonged to that union regardless of the union's affiliation; that it has not organized a company union, nor sponsored any certain union, nor discharged its employees for union activity or affiliation; that it entered into a contract and gave preference of employment, in selecting the unlicensed personnel of its crews, to members of the International Seamen's Union of America (hereinafter referred to as I. S. U.), an affiliate of the American Federation of Labor (hereinafter referred to as A. F. of L.), for the reason that a majority of its employees of this class were members of that union; that such preferential employment contracts are valid; that the evidence is virtually without dispute that repairs on the two steamships in question had been planned by the company long before the crews changed their membership from one union to another; that when the ships were laid up for repairs the crews were discharged only for reasons of economy; that there was no effort on the part of the Waterman Steamship Corporation to make war on the unions; that the evidence does not even point in that direction; that some of the members of the crews were employed in the shops while the ships were laid up; that the engineers of the Waterman Steamship Corporation were members of the Marine Engineers Beneficial Association (hereinafter referred to as M. E. B. A.), a C. I. O. affiliate, and that no effort was made to discharge them; that, notwithstanding such C. I. O. affiliation, it may be concluded that all of these engineers, with the exception of O'Connor, were still working for the Waterman Corporation; that the finding of the National Labor Relations Board that the ships were laid up as an excuse to get rid of the men is based on suspicion and not on the evidence; that when the time came to employ crews for the S. S. "Bienville" and S. S. "Fairland," after they had been repaired, the Waterman Steamship Corporation was bound under its contract to select its unlicensed em-

ployees from the membership of the I. S. U.; that the National Labor Relations Board, by its order, would penalize the Waterman Corporation for keeping its contract; that the attitude of the Waterman Corporation in refusing to issue passes to representatives of either union to come aboard its vessels to organize and recruit members, is clearly shown by the order addressed to the Masters of all vessels in July, 1937, instructing such Masters that the Steamship Company would not allow any delegates from either union to board its vessels for the purpose of soliciting memberships; that under the provisions of the contract with the I. S. U. their representatives were granted passes to go aboard vessels to collect dues from its members but both unions were alike denied passes to solicit memberships; that the trouble was not of the making of the Waterman Steamship Corporation; that the controversy emanated from a fight between two unions and nothing more; that as they fought to oust each other the Waterman Steamship Corporation became the victim; that one may conclude from the evidence that if the union representatives were permitted to go aboard the ships to organize and recruit members, business and shipping in all probability would be shunted aside while the rival unions staged a battle for supremacy; that the Waterman Corporation was within its rights when it forbade the representatives of either union to come aboard its vessels for the purpose of soliciting memberships; that it played no favorite and the National Labor Relations Board erred in its order in this respect; that while the National Labor Relations Board has wide discretion in administering the Wagner Act, yet in so doing it must deal fairly with all parties; that it has the duty to decide the case before it on all of the evidence and should not arbitrarily cast away all the undisputed evidence that is inconsistent with its findings; that if its findings are supported by substantial evidence they should stand but the test of substantial evidence, however, is not satis-

fied by evidence which merely creates a suspicion; that the special finding of the National Labor Relations Board as to Edmund J. Pelletier, Steward of the S. S. "Bienville," is not supported by the evidence as the Record shows without dispute that the Captain of the S. S. "Bienville" had written from a foreign port to the Port Captain at Mobile, complaining of the way in which Pelletier was running the Steward's Department aboard ship; that the Waterman Corporation had a right to discharge Pelletier for cause; that all employers have wide latitude in employing and discharging employees, the only requirement of the National Labor Relations Act being that the employee must not be discharged on account of union activities and union affiliations; that the evidence shows that there is no merit in the Board's finding that C. J. O'Connor, Second Assistant Engineer on the S. S. "Azalea City," was discharged for his participation in a collective protest and for holding membership in the M. E. B. A.; that O'Connor was not discharged; that the Port Captain did not discharge him but directed him to take a vacation when he arrived in Mobile, which he did; that the evidence tends to show that O'Connor was in the habit of taking voluntary vacations at frequent intervals; that O'Connor has never returned and formally made request to be placed on active duty; that he is entitled to be paid for the number of days that the Company allows and grants for vacation to its employees in his class, and upon application he is also entitled, if he can satisfactorily qualify, to be offered reinstatement to his former position; and that the petition of the Waterman Steamship Corporation should be granted and the order of the National Labor Relations Board be vacated except as modified and approved as to C. J. O'Connor (R. 537-541).

Waterman Steamship Corporation vs. National Labor Relations Board, et al., 103 Fed. (2d) 157.

As above suggested, this opinion contains about as concise and clear-cut a statement of what the Record shows as could be given.

We doubt if there has ever been a complaint filed under the Wagner Act against a Steamship Corporation, or against any other employer of labor, which had as little justification as the complaint filed in this case. The Waterman Steamship Corporation has at no time and under no circumstances been an employer corporation which fought labor unions. As well pointed out in the very able opinion of Circuit Judge McCord, the controversy in the instant case was not really a controversy between the Waterman Steamship Corporation and the C. I. O. affiliate known as the National Maritime Union (N. M. U.), but was a fight which had been waged for some time between the International Seamen's Union of America, an affiliate of the American Federation of Labor, and the National Maritime Union, an affiliate of the Committee for Industrial Organization, to gain supremacy in the selection of the unlicensed personnel of Steamship Companies.

The Record shows without conflict that at all times the Waterman Steamship Corporation had recognized as the appropriate bargaining agency that union to which a majority of its employees in the respective departments belonged. For example, the Waterman Steamship Corporation made a contract with the I. S. U., an A. F. of L. affiliate, as the appropriate bargaining agency for its unlicensed personnel and the Record shows without conflict that this particular group of employees of the Waterman Steamship Corporation was 100% members of the International Seamen's Union of America. The Trial Examiner in his Intermediate Report expressly found that this contract was valid because all of the employees in that particular group belonged to the I. S. U. at the time the contract was made.

The preferential employment contract between Waterman Steamship Corporation and the International Seamen's Union of America, in force at the time of the occurrences referred to in this case, contained the following provision:

> "Section 1. It is understood and agreed that as vacancies occur, members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the respective positions; provided, however, that this Section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt reshipment, or absence due to illness or accident." Section 1, Article II, Respondent's Exhibit No. 14 (R. 171).

All of the seamen whose names are listed in these proceedings entered the employment of the Waterman Steamship Corporation as members of the International Seamen's Union of America, and each of them, before entering upon a voyage on a Waterman Steamship Corporation boat, signed the usual shipping articles providing for only one voyage.

When the S. S. "Bienville" and the S. S. "Fairland" reached the Port of Tampa on their return voyage to this country, an organizer of the National Maritime Union of America (N. M. U.) boarded the vessels and represented to the crews, in substance, that the officers of the I. S. U. at Mobile had skipped out with all the money of that Union, and that the I. S. U. was no longer functioning at the Port of Mobile, and if these seamen wished to go back to sea after reaching Mobile, it would be necessary for them to join the N. M. U., which was then in control of the furnishing of seamen to vessels leaving the Port of Mobile.

During the hearing before the Trial Examiner, a number of affidavits made by members of the crews of the two vessels in question were offered in evidence before the Trial Examiner, by the attorneys for the I. S. U., which had intervened in this proceeding, these affidavits setting forth in considerable detail the representations made to members of the crews of these two ships by the N. M. U. organizers at Tampa, Florida, in order to get these seamen to change their union affiliation. The Trial Examiner refused to admit these affidavits in evidence, but the National Labor Relations Board, by order entered May 13, 1938, (R. 103), ordered that these affidavits be incorporated in the Record as Respondent's Exhibits 1-13 for identification. The original affidavits are on file in Court.

When the S. S. "Bienville" and the S. S. "Fairland" reached the Port of Mobile, the members of the crews were paid off and discharged in the presence of the United States Shipping Commissioner, as required by statute, and the S. S. "Bienville" was taken off its run for some three or four weeks, while very extensive repairs and additions were made thereto, and the S. S. "Fairland" was dry-docked for the purpose of having her tail shaft drawn for inspection, which was due about July 10th. The plan, as shown by the undisputed testimony, to lay up the "Bienville" for these repairs and to have the "Fairland" go on dry dock had been made for a long time prior to the time that any of the members of the crews of these two ships changed their union affiliations from the I. S. U. to the N. M. U.

When the Waterman Steamship Corporation was ready to send these ships out on another voyage they were required, under the preferential contract above referred to, to give preference of employment to members of the I. S. U., and this was done. In fact, the Waterman Steamship Corporation was notified by the

representatives and attorney of the I. S. U. that if they failed to abide by their contract to give preference of employment to members of the I. S. U., the Waterman Steamship Corporation would be sued for damages for breach of contract.

Of course, while the ships were tied up at Mobile it would have been mere waste of money, and certainly not economical operation, to have kept crews on these ships. However, the Record shows that the Waterman Steamship Corporation did give employment in their repair shops on shore to members of these two former crews who joined the N. M. U. and were no longer eligible, under the existing contract between the Waterman Company and the I. S. U. for employment as seamen on the vessels of the Waterman Company.

The N. M. U. organizers insisted on the Waterman Steamship Corporation's granting passes to representatives of that Union to board its vessels for the purpose of soliciting membership in their Union. However, the Waterman Steamship Corporation refused to permit representatives of either union to board its vessels for the purpose of soliciting membership, and a letter was addressed to the masters of all of its vessels relative to denying passes to representatives of either union for the purpose of soliciting membership in such unions, and the Waterman Steamship Corporation further notified the agent for the I. S. U., with which union it had a contract, to the same effect. The letter which Executive Vice-President Nicolson, of the Waterman Steamship Corporation, addressed to the masters of all vessels, under date of July 13th, 1937, was as follows:

"TO ALL MASTERS:—

In view of the fact that the National Labor Relations Board are now holding elections to deter-

mine whether the N. M. U. or the I. S. U. should represent the unlicensed members of our crews in collective bargaining, we have decided that we will not allow any delegates from either union to board our vessels for the purpose of soliciting memberships.

(Signed) N. Nicolson,

Executive Vice-President." (R. 298).

SUMMARY OF ARGUMENT.

POINT 1.

Waterman Steamship Corporation had a contract with International Seamen's Union which is recognized by the National Labor Relations Act as valid and binding. This contract required Waterman Steamship Corporation, as vacancies occurred, to give preference of employment to members of the I. S. U.

POINT 2.

The seamen on the S. S. "Bienville" and the S. S. "Fairland" had signed shipping articles for one voyage only. Under the statutes of the United States, the employment of the seamen on board each of these vessels terminated as a matter of law when the vessels returned to Mobile, the final port of discharge, and the men were paid off and discharged before the United States Shipping Commissioner. When these ships were again ready to sail, vacancies existed within the meaning of the contract with the I. S. U., obligating Respondent to give preference of employment to members of the I. S. U.

Title 46, United States Code, Sections 563, 564, 565, 566, 567, 568, 572, 574, 596, 603, 604, 641, 642, 643, 644, 645.

POINT 3.

There is no sufficient evidence in the Record to sustain the Board's finding that the Waterman Steamship Corporation discriminated against any of its employees in regard to hire or tenure of employment, in violation of the National Labor Relations Act.

The findings of fact by the Board are not conclusive unless they are supported by substantial evidence which can afford a substantial basis from which the fact in issue can be reasonably inferred, and it must do more than create a suspicion of the existence of the fact to be established.

National Labor Relations Board v. Columbian Enameling & Stamping Company, Inc., 306 U. S. 292.

See, also:

Peninsular & Occidental Steamship Company v. National Labor Relations Board (5th C. C. A.), 98 F. (2d) 411, (certiorari denied 305 U. S. 653).
National Labor Relations Board v. Union Pacific Stages (9th C. C. A.), 99 F. (2d) 153.

There is no evidence whatsoever in support of the Board's finding that Respondent arranged the lay-ups of the vessels for the purpose of facilitating discriminatory discharges of the crews. There is an abundance of clear and undisputed evidence in the Record showing that Waterman Steamship Corporation had made plans, long before the change in union affiliation, to

lay up both the S. S. "Bienville" and the S. S. "Fairland" for repairs.

Edmund J. Pelletier had been found by his superiors to be inefficient, and this was an additional reason why Respondent did not re-employ him. C. J. O'Connor was not discharged, but voluntarily left Respondent's service to take a vacation, and never re-applied for employment. The National Labor Relations Act does not empower the Board to substitute its judgment for that of the employer in the conduct of his business, and does not deprive the employer of the right to select or dismiss his employees for any cause except actual discrimination because of union affiliation.

Associated Press v. National Labor Relations Board, 301 U. S. 103.
National Labor Relations Board v. Jones & Laughlin Steel Corporation, 301 U. S. 1.
National Labor Relations Board v. Union Pacific Stages (9th C. C. A.), 99 F. (2d) 153.

Waterman Steamship Corporation showed no favoritism between members of the I. S. U. and members of the N. M. U. Preference of employment was given to I. S. U. members only where required by the contract in existence. After the "Bienville" and the "Fairland" were laid up, the former members of their crews, who were then members of N. M. U., were given employment in the repair shops on shore, which were open shops. The Respondent had a contract with M. E. B. A., a C. I. O. affiliate, and all of its Engineers were members of this Union.

The Board's findings that the lay-up of the ships was arranged to facilitate a discriminatory discharge of the crews, and that there was discrimination in the allotment of shore work are based upon suspicion rather than upon any substantial evidence.

POINT 4.

There is no sufficient evidence in the Record to sustain the Board's finding that Respondent violated Section 8(1) of the Act by discriminating in the issuance of passes to union representatives. Petitioners admit in their brief that there would be no discrimination if Respondent barred both unions from soliciting membership on board its vessels. The Record shows conclusively that this is exactly what Respondent did. There is no evidence whatsoever in the Record that Respondent allowed any members of I. S. U. to solicit membership on board its vessels.

ARGUMENT

POINT 1.

THE CONTRACT BETWEEN WATERMAN STEAMSHIP CORPORATION AND INTERNATIONAL SEAMEN'S UNION WAS A VALID CONTRACT AND BOUND WATERMAN STEAMSHIP CORPORATION TO GIVE PREFERENCE OF EMPLOYMENT TO MEMBERS OF THE I. S. U. WHEN HIRING NEW CREWS FOR THE S. S. "BIENVILLE" AND S. S. "FAIRLAND".

The validity of the contract entered into between the Waterman Steamship Corporation and the International Seamen's Union of America, which was in full force and effect during all of the times herein referred to, under the terms of which contract preference of employment was to be given the members of the I. S. U., is not questioned by the petitioner. In fact, the Trial Examiner in his Intermediate Report expressly found that the contract was valid. We quote from the Trial Examiner's Report as follows:

"Indeed, the evidence with respect to at least two of the ships involved in the present proceedings, namely the "Bienville" and the "Fairland", shows that their crews belonged one hundred per cent to the I. S. U. in the middle of 1937. The contract of March 9th, 1937, was thus valid in its inception. It was made as a group contract which was signed by many other shipping companies in addition to the respondents." (R. 51).

As a matter of fact, it is admitted on all sides that there is no question but that an overwhelming number, if not one hundred per cent, of all of the unlicensed employees of the Waterman Steamship Corporation, not only on the two ships in question, but on its entire fleet of ships, have belonged to the I. S. U. for some time. Therefore, the Trial Examiner could have gone further and stated that the record showed without dispute, that as early as March, 1936, the unlicensed personnel of all of the Waterman Steamship Corporation's vessels were one hundred per cent I. S. U. (R. 51).

It will be recalled that in this case, as well as in the case of Peninsular & Occidental Steamship Company vs. National Labor Relations Board, 98 F. (2d) 411, (certiorari denied 305 U. S. 653, 83 L. Ed. 224) that no bargaining agent had been designated by the National Labor Relations Board. The election heretofore ordered by the Board has never yet been held, and in discussing this situation Judge Foster, in his opinion in the Peninsular & Occidental Steamship Company case, made the following comment:

"The right of an employer to make a contract with a labor union and to require membership therein as a condition of employment is expressly recognized by the Act. 29 U. S. C. A. Sec. 158 (3). The contract with the International Seamen's

> Union was a valid, existing agreement at the time the crews were discharged and no other bargaining unit had been designated. Under its terms the company was obliged to give its members preference in reemployment. * * * No other bargaining agent having been designated by the Board, in employing new crews the company was bound by its contract to give preference to the International Seamen's Union. Had it not done so it would have been subject to charges for violating the Act.
>
> Peninsular & Occidental S. S. Co. vs. N. L. R. B. (5th C. C. A.), 98 Fed. (2d), 411 (414-15). (Certiorari denied 305 U. S. 653).

The contracts which the International Seamen's Union of America entered into with various Steamship Companies were uniform throughout the country.

The Record shows, without controversy, that the International Seamen's Union has lived up to its contract with the Waterman Steamship Corporation and has been in a position to furnish the Waterman Steamship Corporation with competent crews at all times (R. 285). Likewise, the Waterman Steamship Corporation has lived up to its contract with the I. S. U.

The only case in which the Waterman Steamship Corporation under its contract was not required to give preference of employment to members of the I. S. U. was in case of "prompt reshipment". Of course, this exception could have no possible application to the situation here presented, where the S. S. "Bienville" was tied up for repairs, alterations and additions for some three or four weeks, and the S. S. "Fairland" went on dry dock and was tied up for practically a week. While the testimony of witnesses varies somewhat as to just how many hours a vessel could remain

in port and it could still be said that there was a case of "prompt reshipment", yet, none of the testimony could possibly support a finding that either in the case of the S. S. "Bienville" or in the case of the S. S. "Fairland" there was a "prompt reshipment." In other words, this clause, providing that the giving of preferential employment to members of the I. S. U. should not apply in cases of "prompt reshipment" was inserted in these contracts for the purpose of taking care of the situation where a steamship company might be put to considerable damage if, before signing up a new crew, it had to first offer employment to all available members of the I. S. U. The I. S. U. evidently made this concession in these contracts with the steamship companies in order to protect the steamship companies against a situation where it was important that a ship sail immediately after unloading and where, if a sailing was delayed until employment for the new voyage could first be offered to all available members of the I. S. U., the steamship company might suffer considerable damage from loss of time, etc.

We must not overlook the fact that the Waterman Steamship Corporation had been duly warned by the I. S. U., through its attorney, that if the Waterman Steamship Corporation violated the terms of its contract with the I. S. U., it would be subject to suit (R. 312). Naturally, after being thus put on notice as to the intention of the I. S. U. to hold it to strict accountability in event it violated its contract with the I. S. U., the respondent would not have felt justified, and, in fact, it was not justified, in ignoring its contract with the I. S. U. and refusing to give preference of employment to members of the I. S. U.

The witness William Ross, the representative of the I. S. U., testified quite fully as to the notices or warnings he had given the Waterman Steamship Corporation to the effect that he would insist upon the contract

between the Waterman Steamship Corporation and the I. S. U. being carried out as written, and that suits for damages would be filed against respondent on its failure to comply with its contract (R. 506).

POINT 2.

UNDER THE SHIPPING ARTICLES IN THIS CASE PROVIDING FOR ONE VOYAGE, THE EMPLOYMENT OF THE SEAMEN TERMINATED UPON THE RETURN OF THE VESSEL TO THE PORT OF DISCHARGE.

It is quite apparent from the Record in this case that the decision and order of the National Labor Relations Board is based largely upon the erroneous assumption that a seaman's employment is of a continuous nature. We feel confident that there will be no difficulty in satisfying this Court that such is not the case.

The whole contention of the attorneys for the National Labor Relations Board seems to be that even though a seaman signs shipping articles for one voyage and completes this voyage and comes back to the port of discharge and is formally signed off before the United States Shipping Commissioner, no vacancy exists and he is still an employee of the steamship company. In taking this position our learned opponents have evidently entirely overlooked the relevant Federal statutes bearing on seamen and shipping articles.

It is our contention that not only in the case of the seamen employed on the S. S. "Bienville," which made a voyage to Europe, but also in the case of the seamen on the S. S. "Fairland," which made a voyage to the West Indies, the employment of the seamen by the

Waterman Steamship Corporation was terminated, as a matter of law, when the seamen were paid off and discharged before the United States Shipping Commissioner. It is further our contention that it was the duty of the Waterman Steamship Corporation, under the provisions of the statutes of the United States, to pay off and discharge these seamen before the Shipping Commissioner at the end of the respective voyages, and that, therefore, as a matter of law, there can be no room for the contention that the discharge of these seamen was motivated by their union affiliation and activities.

For convenience, we shall first discuss the law applicable to the discharge of the seamen employed on board the S. S. "Bienville" for a voyage to Europe, and we shall then proceed to a discussion of the law applicable to the seamen employed on board the S. S. "Fairland" for a voyage to the West Indies.

The statutes absolutely require the signing of shipping articles for a European voyage, the provisions in this respect being as follows:

> "**Sec. 564. Shipping articles.** The master of every vessel bound from a port in the United States to any foreign port other than vessels engaged in trade between the United States and the British North American possessions, or the West India Islands, or Mexico, or of any vessel of the burden of seventy-five tons or upward, bound from a port on the Atlantic to a port on the Pacific, or vice versa, **shall**, before he proceeds on such voyage, make an agreement, in writing or in print, with every seaman whom he carries to sea as one of the crew, in the manner hereinafter mentioned; and every such agreement shall be, as near as may be, in the form given in the table marked A, in the schedule annexed to this chapter, and shall be

dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars:

"First. The nature and, as far as practicable, the duration of the intended voyage or engagement, **and the port or country at which the voyage is to terminate.**

"Second. The number and description of the crew, specifying their respective employments.

"Third. The time at which each seaman is to be on board, to begin work. * * *"

Title 46, U. S. Code, Section 564.

Both the vessel and the master are made liable to a penalty for carrying seamen to sea without making the written agreement required by law.

Title 46, U. S. Code, Sections 567, 568.

It is further provided that the master of the vessel may engage seamen "in the manner provided by law to serve on a voyage to any port, **or for the round trip from and to the port of departure,** or for a definite time whatever the destination."

Title 46, U. S. Code, Section 572.

The shipping articles for the S. S. "Bienville," which are in evidence in this case as Respondent's Exhibit No. 23, provided for a voyage "to Havre, France, via one or more coastwise ports, and such other ports and places in any part of the world as the Master may direct, and back to **a final port of discharge in the United States.**" Therefore, upon the return of the vessel to Mobile, Alabama, from this voyage, and upon the discharge of the cargo in Mobile, the term of employment

of the seamen, under the provisions of the shipping articles, terminated.

When the cargo of the S. S. "Bienville" was discharged in Mobile, it was the duty of the Waterman Steamship Corporation to pay the wages due to the seamen within twenty-four hours, under the provisions of Title 46, U. S. Code, Section 596.(1) After the employment of the seamen was terminated, under the provisions of the shipping articles, the only manner in which the wages could be paid, in conformity with law, was for the master to pay off and discharge the seamen under the following provision of the statute:

> **Sec. 641. Mode.** All seamen discharged in the United States from merchant vessels engaged in voyages from a port in the United States to any foreign port . . . shall be discharged and receive their wages in the presence of a duly authorized shipping commissioner under this chapter, except in cases where some competent court otherwise directs; and any master or owner of any such vessel who discharges any such seamen belonging thereto, or pays his wages within the United States in any other manner, shall be liable to a penalty of not more than $50."
>
> Title 46, U. S. Code, Section 641.

We wish especially to emphasize the point that under the provisions of the above quoted statute the law requires that in any case where the master or owner pays the wages of a seaman, after the expiration of the term of the employment provided in the shipping

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(1) The applicable part of Title 46, U. S. Code, Section 596 is as follows: "The master or owner of any vessel . . . shall pay to every seaman his wages . . . in case of vessels making foreign voyages . . . within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens."
46 U. S. Code, Section 596.

articles, such payment of wages must be made before the Shipping Commissioner, and the seamen must be discharged before the Shipping Commissioner in the manner required by law.

The statutory provision in respect of the effect of a discharge and settlement before a shipping commissioner is as follows:

> "**Sec. 644. Rules for settlement.** The following rules shall be observed with respect to the settlement of wages:
>
> "First. Upon the completion before a shipping commissioner, of any discharge and settlement, the master or owner and each seaman, respectively, in the presence of the shipping commissioner, shall sign a mutual release of all claims for wages in respect of the past voyage or engagement, and the shipping commissioner shall also sign and attest it, and shall retain it in a book to be kept for that purpose, provided both the master and seamen assent to such settlement, or the settlement has been adjusted by the shipping commissioner.
>
> "Second. Such release, so signed and attested, shall operate as a mutual discharge and settlement of all demands for wages between the parties thereto, on account of wages, in respect of the past voyage or engagement.
>
> "Third. A copy of such release, certified under the hand and seal of such shipping commissioner to be a true copy, shall be given by him to any party thereto requiring the same, and such copy shall be receivable in evidence upon any future question touching such claims, and shall have all the effect of the original of which it purports to be a copy.

"Fourth. In cases in which discharge and settlement before a shipping commissioner are required, no payment, receipt, settlement, or discharge otherwise made shall operate as evidence of the release or satisfaction of any claim.

"Fifth. Upon payment being made by a master before a shipping commissioner, the shipping commissioner shall, if required, sign and give to such master a statement of the whole amount so paid; and such statement shall, between the master and his employer, be received as evidence that he has made the payments therein mentioned."

Title 46, U. S. Code, Section 644.

It appears to us to be clear beyond the necessity of any further argument that when a seaman, employed for one foreign voyage, has been paid off and discharged before a shipping commissioner, in accordance with the provisions of the statutes referred to in the foregoing discussion, the relationship of employer and employee, between the master or owner and the seaman, is definitely at an end. Furthermore, when the shipping articles have been signed for one voyage only, it is the effect of the provisions of the statutes that requires the seamen to be discharged before the shipping commissioner at the termination of the voyage stipulated in the shipping articles. The master or owner has no option except to pay off and discharge the seamen before the United States Shipping Commissioner.

In the case of the coastwise trade and trade to the West Indies, the statute does not require the signing of articles before a shipping commissioner (Title 46, U. S. Code, Section 566), although a written agreement declaring the voyage or term of time for which the seamen are shipped must be made (Title 46, U. S.

Code, Section 574). However, when articles for a voyage in this trade are signed before a shipping commissioner, the payment and discharge of the seamen are governed by section 563 of Title 46 of the United States Code, the pertinent provisions of which are as follows:

> "**Sec. 563. Shipment of crews by shipping commissioners; shipping agreements.** Shipping commissioners may ship crews for any vessel engaged in the coastwise trade, or the trade between the United States and . . . the West Indies, . . . at the request of the master or owner of such vessel.
>
> "When a crew is shipped by a shipping commissioner for any American vessel in the coastwise trade, or the trade between the United States and . . . the West Indies, . . . as authorized by this section, an agreement shall be made with each seaman engaged as one of such crew in the same manner as is provided by sections 564 and 565, not however including the sixth, and eighth items of section 564, and such agreement shall be posted as provided in section 577, and such seamen shall be discharged and receive their wages as provided by the first clause of section 596, and also by sections . . . 603, 604, . . . 641 to 645, inclusive, . . ."
>
> Title 46, U. S. Code, Section 563.

For the convenience of the Court, we shall briefly identify the various sections which are referred to in the statute above quoted. Section 564 is the section requiring foreign bound vessels to sign shipping articles, and prescribing the provisions which these articles must contain. This Section 564 of Title 46 of the U. S. Code has already been referred to and quoted in this brief.(a) The sixth and eighth items, which are

(a) Page 18 of this brief.

excepted, are not relevant to the matter under discussion. Section 565 referred to above is the statute referring to the manner of signing the articles before the Shipping Commissioner.

The first clause of Section 596, which is referred to in the statute above quoted, is as follows:

> "The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; . . ."

Title 46, U. S. Code, Section 596.

Sections 603 and 604, which are referred to in the above quoted portion from Section 563 of Title 46, U. S. Code, provide that in the event wages are not paid within a certain time after they become due by law, the seamen may summon the master to appear before a Court and may libel the vessel for wages.

Title 46, U. S. Code, Sections 603, 604.

Section 641 referred to in the above quotation from Section 563 is the section requiring that all seamen shall be discharged and receive their wages in the presence of a duly authorized shipping commissioner. This section has been referred to and quoted previously in this brief.[3] Sections 642 to 645, inclusive, also referred to in the quotation from Section 563, provide certain rules and regulations in connection with the discharge before the Shipping Commissioner. Section 644, which is included among these sections, has been quoted in full in this brief,[4] and is the section provid-

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[3] Page 20 of this brief.

[4] Page 21 of this brief.

ing that the release signed before the Shipping Commissioner shall be a full release and discharge from further claims.

In other words, when the United States Shipping Commissioner ships crews for a vessel engaged in trade with the West Indies, then the seamen must sign articles which are identical with the articles signed by seamen on a foreign voyage (with certain immaterial exceptions), and they must be discharged before the United States Shipping Commissioner in accordance with the provisions of exactly the same statutes which apply to vessels engaged in foreign trade. The mandatory provisions of Section 563, Title 46, U. S. Code, are so clear that we do not think any further discussion is required on this proposition of law.

We do wish especially to point out, however, that the shipping articles for the voyage of the "Fairland," which are in question in this case, were signed before the United States Shipping Commissioner, in accordance with the provisions of Section 563, Title 46, U. S. Code, as is shown by the certified copy of shipping articles which are in evidence in this case as Respondent's Exhibit No. 22. We also wish to point out that the shipping articles for the "Fairland" were signed **for one voyage only**, with Mobile, Alabama, named as the final port of discharge.

Therefore, the law applicable to the discharge of the seamen is identical in the case of both the S. S. "Bienville" and the S. S. "Fairland." As we have previously emphasized, the effect of the written contract of employment, stipulating a term of employment for one voyage only, and the effect of the applicable statutes, was to require the discharge of the seamen before the United States Shipping Commissioner at the end of the voyage. Furthermore, as we have also pre-

viously emphasized, we believe that it is clear that upon the termination of the period of employment stipulated in the shipping articles, and upon the discharge of the seamen before the United States Shipping Commissioner, the employment of the seamen by the master or owner was terminated, and there did not remain any relationship of employer and employee.

Counsel for the National Labor Relations Board, the Petitioner, take the position that the employment of a seaman is similar to the employment of any person in ordinary occupations on land. They contend that the employment is continuous until it is terminated by the affirmative act of one party or the other. When separate shipping articles are signed for each voyage and the seamen are discharged at the end of the voyage before the United States Shipping Commissioner, in accordance with the requirements of law, there can be no possible basis for a comparison between the nature of such employment and the nature of employment in ordinary occupations on land. Under the usual method of hiring an employee on land, there is no written contract entered into definitely specifying the period and termination of employment. It is merely implied that the employment shall continue from day to day, or from week to week, as the case may be, as long as it is mutually satisfactory to the employer and the employee. Naturally, under such an arrangement, there must be a definite act by either one party or the other which will bring this relationship of employer and employee to a close. The distinction between this type of employment and the employment of seamen for one voyage only, under the terms of a written contract, is obvious.

While the statutes very clearly define the nature of the employment of seamen, yet, merely for the purpose of having the matter brought clearly before this court we would like to quote briefly from the very

exhaustive report which was recently made by the then United States Maritime Commissioner, Hon. Joseph P. Kennedy. That part of the report from which we wish to quote is found on page 10 of the November 15th, 1937, issue of the Labor Relations Report (Index page 274). The following quotation taken from that report appears under the sub-head "Continuous Employment":

> "It has long been the practice of the sea to sign workers on and off for each voyage. * * * The substitution of continuous employment for the present system should help materially in reducing the heavy labor turnover. In furtherance of this plan there should be a revision of the existing form of **ship's articles.** While these articles give the employer some measure of protection against desertions, and while they insure the men against dismissal in the course of the voyage, they amount to little, in the final analysis, beyond a periodic hiring and firing of the personnel. It is not surprising that the worker, under these conditions, should develop an indifferent attitude toward his job. Continuous employment is the rule in most industries. It should be the rule for shipping."

Counsel for Petitioner emphasize testimony in the Record which, it is contended, establishes the fact that there is a custom in the shipping industry by which the employment of seamen is continuous. Reference is also made to certain terms used in the contract between the Waterman Company and the I. S. U., and to certain terms used by witnesses in their testimony, which Petitioner contends indicates an understanding that such employment is continuous. It should be remembered that the statute provides that seamen may be engaged either for one voyage or for a definite time (Title 46, U. S. Code, Section 572). Many steamship companies may follow the practice of having the

seamen sign articles for a definite time, and, of course, during the period of time covered by the articles, the employment is continuous even though many voyages may be made during such period. The practice of signing articles for a definite period of time is probably followed by the Waterman Company's affiliated company, the Pan-Atlantic Steamship Corporation, which operates coastwise vessels. General testimony as to custom, which might indicate any custom of continuity of employment, undoubtedly refers to instances in which articles of this character have been signed. It can certainly have no application to those cases in which the shipping articles—the written contract of employment between the master or owner and the seamen—expressly stipulate that the term of employment shall be for one voyage, nor could any custom have the effect of varying the provisions of a written contract and the positive requirements of statutory law.

Counsel for Petitioner also refer to testimony in regard to a practice sometimes followed of having some part of the crew on board a ship between voyages, and while the ship is in its home port. Undoubtedly, there may be instances in which there is some work to be done on a ship while it is in its home port. In those instances where the seamen have signed articles for a definite period of time, and such period has not expired, the master or owner would very probably use the services of the seamen who were already under contract of employment. In these instances the employment of the seamen in the home port may be considered as a continuation of their employment at sea. Where articles have been signed for one voyage only, the master or owner may or may not hire for work on the ship in the home port those seamen who have been out on the previous voyage. In many instances, some of the same seamen—or even most of them—might be hired for such work, but this would be an entirely new and distinct employment.

We respectfully submit to the Court that the validity of the contract between the Waterman Company and the I. S. U. not being controverted, and the obligation being imposed upon the Waterman Company by the said contract to give preference of employment to members of that Union, whenever vacancies exist, and the statutes above quoted showing conclusively that vacancies did exist, there was no course left open to the Waterman Steamship Corporation except to comply with its contract and give employment to members of the I. S. U. when these ships were ready to sail again. This situation, in our opinion, completely disposes of the entire case and renders it unnecessary for us to inquire further into the motives or plans of the Waterman Steamship Corporation relative to the two ships in question or to the former members of the crews of these two ships. The Waterman Steamship Corporation being required by its contract and by the statutes above referred to, to take the action which it did take, there can be no possibility of attributing to it any motives of discrimination because it gave preference of employment to members of the I. S. U. when the two ships were ready to sail again.

POINT 3.

THERE IS NO SUFFICIENT EVIDENCE IN THE RECORD TO SUSTAIN THE BOARD'S FINDING THAT THE WATERMAN STEAMSHIP CORPORATION DISCRIMINATED AGAINST ANY OF ITS EMPLOYEES IN REGARD TO HIRE OR TENURE OF EMPLOYMENT IN VIOLATION OF THE NATIONAL LABOR RELATIONS ACT.

While we believe that the propositions hereinabove presented show conclusively that vacancies existed and under the existing contract had to be filled with

members of the I. S. U., yet, the Board has endeavored to go through the voluminous Record in this case and point out certain evidence which the Board contends showed an intention on the part of the Waterman Steamship Corporation to discriminate against members of the N. M. U. This Court has in several recent and well-considered cases very clearly stated what evidence must be shown by the Record in order for the Board's finding of facts to be conclusive. We quote as follows from the opinion of this Court in the case of National Labor Relations Board vs. Columbian Enameling & Stamping Company, Inc., reported in 306 U. S. 292:

> "Section 10 (e) of the Act provides: '* * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive.' But as has often been pointed out, this, as in the case of other findings by administrative bodies, means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred. Washington V. & M. Coach Co. v. National Labor Relations Bd. 301 U. S. 142, 81 L. Ed. 965, 57 S. Ct. 648; Consolidated Edison Co. v. National Labor Relations Bd. decided December 5, 1938, 305 U. S. 197, 59 S. Ct. 206; Appalachian Electric Power Co. v. National Labor Relations Bd. (C.C.A. 4th) 93 F. (2d) 985, 989; National Labor Relations Bd. v. Thompson Products (C.C.A. 6th) 97 F. (2d) 13; Ballston-Stillwater Knitting Co. v. National Labor Relations Bd. (C.C.A. 2d) 98 F. (2d) 758, 764. Substantial evidence is more than a scintilla, **and must do more than create a suspicion of the existence of the fact to be established.** 'It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,' Consolidated Edison Co. v. National Labor Relations Bd. 305 U. S. 197, 59 S. Ct. 206, supra, ..."

National Labor Relations Board vs. Columbian Enameling & Stamping Company, Inc., 306 U. S. 292.

We will here quote from two decisions rendered by the Fifth Circuit Court of Appeals and the Ninth Circuit Court of Appeals, respectively, which decisions appear to be in line with the holdings of this Court on the proposition above discussed:

"It is the duty of the Board to decide the case before it on all the evidence. **It is not at liberty to rely upon part of the evidence in support of its findings and put aside all other undisputed evidence.** * * * On all the evidence in the case, the company, in the circumstances shown, was not guilty of violating the National Labor Relations Act. **The findings of the Board are not supported by evidence within the meaning of the law.** It follows that the petition of the company to annul and set aside the order must be granted and the application of the Board to enforce the order must be denied."

Peninsular & Occidental S. S. Co. v. N. L. R. B. (5th C. C. A.), 98 Fed. (2d) 411 (415-6). Certiorari denied 305 U. S. 653, 83 L. Ed. 224.

"It is suggested that this court should accept the findings of the Board; that contradictions, inconsistencies, and erroneous inferences are immune from criticism or attack by Section 10 (e) of the Act, 49 Stat. 453, 29 U. S. C. A. Sec. 160 (e), which provides that 'the findings of the Board as to the facts, if supported by evidence, shall be conclusive.' But the courts have not construed this language as compelling the acceptance of findings arrived at by accepting part of the evidence and totally disregarding other convincing evidence."

National Labor Relations Board v. Union Pacific Stages (9th C. C. A.), 99 Fed. (2d) 153 (177).

Lay-Up of Vessels

On page 14 of brief filed by the National Labor Relations Board, it is stated that there is abundant evidence to support the Board's finding that respondent arranged the dates and duration of the lay-ups for the purpose of facilitating the discriminatory elimination of the crews. Notwithstanding this bold assertion in brief filed by counsel for petitioner, they fail to cite any of this "abundant evidence". In fact, there is no evidence in the Record that can support the contention that the lay-up of these vessels was for the purpose of facilitating the elimination of the crews. The most that attorneys for petitioner have undertaken to do is to call attention to several trivial matters which they contend were inconsistent with a pre-arranged plan to tie up these two ships upon their arrival at Mobile.

We deem it entirely unnecessary for us to go into details in this brief in discussing the trivial matters referred to in petitioner's brief which they contend are inconsistent with a pre-arranged plan to tie up these vessels, and which they contend support their theory that the ships were tied up for the purpose of getting rid of the members of the crews which had joined the N. M. U. In our opinion it will only be necessary for us to call the Court's attention to the undisputed evidence found in the record which shows conclusively that long prior to the time that any members of the crews of the Waterman Steamship Corporation's ships had left the I. S. U. and joined the N. M. U., plans and arrangements had been made to tie up the S. S. "Bienville" and the S. S. "Fairland" upon their arrival in Mobile for the purpose of repairs, drydocking, etc.

There is not one scintilla of evidence in the Record disputing the very clear and concise testimony of the Company's port captain, Clarence Reed, of Captain

Norman Nicolson, and of Walter Ingram, the Company's assistant port engineer, showing beyond the shadow of a doubt that long before the Waterman Steamship Corporation knew that any of the members of either of these crews had joined the N. M. U., plans had been made for the "Bienville" and the "Fairland" to be tied up for repairs, dry docking, etc., upon the termination of the particular voyages in question. The conclusion of the Board that these vessels were tied up at the end of these particular voyages on account of what had happened on the voyage is absolutely unsound and unsupported by anything appearing in the Record.

The testimony of Capt. Clarence Reed, the Port Captain for the Waterman Steamship Corporation, whose duty it was to keep track of the various vessels, their schedules, etc., is so conclusive on this proposition and so completely refutes any suggestion or intimation that the "Bienville" and "Fairland" were tied up for the purpose of laying off the crews, that we will here quote briefly from Capt. Reed's testimony. Capt. Reed, of course, is the one who kept the records in the premises and is the one whose testimony would necessarily be more accurate than the testimony of witnesses who were merely relying upon their recollection of what had happened some five or six months previously. All dates, plans, etc., are very clearly set forth in the chart or schedule identified by Capt. Reed, which was introduced in evidence and forms a part of the Record in this case, and is marked for identification "Respondent's Exhibit No. 24" (R. 474).

We will here briefly summarize the testimony of Port Captain Clarence Reed on this proposition:

> "Before the 'Fairland' left Mobile on the voyage in question we knew that the ship had to be dry docked on her arrival back in Mobile; this was

for the purpose of having her tail shaft drawn for inspection, which was due about July 10th; we have a schedule headed: 'Inspection-Drydocking-Surveys', showing the listing of a lot of ships and among them is the 'Fairland'; under the heading of 'Date dry docked', is October 28th, 1936, which means that that was the date of her last drydocking; in the next column headed 'Date due' is shown the date of July 28, 1937, which is the date that she has to next be dry docked, as her nine months would then be up and we are only allowed to run these ships for nine months without dry docking; the 'Fairland' was really dry docked a little before July 28th, 1937, but if she had gone out on a trip the early part of July she would not have gotten back to her home port of Mobile in time to comply with the law and go on dry dock July 28th, 1937; the insurance regulations require this dry docking every nine months and we could not obtain insurance policies unless we complied with this requirement; when a ship comes into port if it is so near the expiration of the nine months period that this nine months period would expire while she was at sea, if she went out on another voyage, it is customary to put her on the dry dock before going on this next voyage; if the 'Fairland' had left and was at sea at the time she should have been on dry dock, there would, of course, have been no opportunity to dry dock her at sea, and if she had gone out on that trip without being first put on dry dock we would have been violating our insurance contract; in the next column headed 'Tail Shaft Drawn' appears the date 'July 10, 1934', that means that that was the date that the tail shaft was last drawn; the tail shaft is the part of the shaft that goes through the stern tube of the ship to which the propeller is fastened; in the next column headed: 'Tail Shaft due drawn', appears the date 'July 10, 1937', which means that the

three years from the date on which the tail shaft was last drawn would expire on July 10, 1937; the laws of the Bureau of Marine Inspection and Navigation require these tail shafts to be drawn once every three years for inspection and the three year period would expire on July 10, 1937; this chart or schedule was made up under my supervision and I know it is correct; when the 'Fairland' came into Mobile on July 5th, or 6th, in order to comply with these regulations requiring that the ship go on dry dock and have her tail shaft drawn, we had to put the 'Fairland' on dry dock, as if she had gone back to sea on July 5th or 6th, the three year period would have expired while she was at sea; relative to when I first knew that the 'Fairland'. would have to have her tail shaft drawn on July 10, 1937, I will state that this schedule is on my desk all the time, it is under the glass top of my desk and I keep myself posted on these dates; I knew of this date ever since March, when I came ashore; I mean by 'coming ashore' the time when I became Port Captain in March, 1937; I then knew that the 'Fairland' should go on dry dock and have the tail shaft drawn on July 10, 1937, or as near that date, prior thereto, as she was in port; it was no sudden decision to put this boat on dry dock to have this work done and the fact that some of the crew of the 'Fairland' had joined the N. M. U. did not at any time have anything whatever to do with the 'Fairland' being put on dry dock in Mobile, as it was all prearranged before I knew that any of the crew of the 'Fairland' belonged to the N. M. U.; on July 1st, 1937, I issued to all departments a statement relative to the Steamship 'Bienville', showing her schedule on the voyage in question; this statement was in substance to the effect that the 'Bienville' was due to arrive in Tampa on July 1st, and from Tampa she would proceed to Pensacola and Mobile, and

that voyage No. 2 would end at midnight following the completion of discharge of the Mobile cargo, at which time the vessel would go on inactive status for a period of about twenty days; this statement which was issued to all departments, was signed by me, and issued by me before I ever heard of any N. M. U. activity in Tampa; attached to this letter or statement is a sailing schedule of the Waterman Company's vessels, including the 'Bienville', which schedule is headed: 'Sailing Schedule, April through August, 1937'; that statement is a correct statement of the sailing schedule of the various vessels, including the 'Bienville', as furnished to me by the Traffic Department; this sailing schedule showed that the 'Bienville' was to sail May 9th for Havre, Antwerp, Rotterdam, Bremen and Hamburg and was due to return to the Gulf on July 2nd, the turn around being about sixty days; that was the schedule which the 'Bienville' made on this trip; instead of July 2nd, she really returned about July 5th or 6th; in this sailing schedule covering the period from April to August, 1937, in the second half of July, where the name of the S. S. 'Bienville' is shown, just opposite this in the next column headed 'Position' is the word 'Repair', then the words 'Gulf, July 7', and in the next column headed 'Due to Sail From', there appears opposite the name of the S. S. 'Bienville' 'July 30'; that was the schedule of the 'Bienville' at that time; this schedule was made up certainly as early as April, 1937, and covers the period from April through August, 1937, and shows a lay-up of the 'Bienville' from July 7 to July 30,—23 days; it did not take any such time as that for this ship to load or unload cargo; that the 23 day period from the time the vessel was due to reach the Gulf on July 7th, and sail on July 30th, was set aside for repairs; I knew as early as April, 1937, that that would be plenty of time for

the 'Bienville' to have her repairs and then leave with her return cargo; I know that this statement is a correct statement furnished by the traffic department, and I further know that I had this schedule or chart in my possession as early as April, 1937." (This sailing schedule or chart was admitted in evidence as Respondent's Exhibit No. 25) (R. 472-476).

Captain N. Nicolson, the Executive Vice-President of the Waterman Corporation, also testified fully relative to the pre-arranged plans to tie up these two ships and showed conclusively that the ships were not tied up as a result of a majority of the crews having joined the N. M. U. In brief for opponents much stress is laid on the fact that there was some inconsistency in the testimony of Captain Nicolson as to whether the steel for the repair work was ordered for the S. S. "Bienville" or for a sister ship, the "Azalea City." Captain Nicolson testified that it might be that some of the steel in question was ordered for work on the S. S. "Azalea City." Of course, it is impossible for a witness such as Captain Nicolson, having general supervision of over thirty ships, to be able to state, in the absence of written records, with any degree of certainty just what was done and what was planned to be done with each ship for each week during the preceding year. Consequently, in order to have accurate testimony on such subjects, it was necessary to refer to the written records which were kept by Captain Reed. The testimony of Captain Nicolson on this proposition will be found in the Record on pages 287-288. The repairs done on the S. S. "Bienville" were quite extensive.

The nature of these repairs and alterations to the "Bienville" was testified to quite fully by Captain Nicolson as follows:

"These repairs consisted among other things of re-locating the entire crews' quarters and the quarters of the passengers as the respondent found it necessary to put better crews' quarters on the vessel also, extensive boiler work was done on the vessel and in order to do this work it was necessary to kill steam on the ship and when respondent was unable to keep steam on its vessel it was, of course, unable to have quarters for the crew to live in as it would not be able to run its sanitary pump to provide water to the bathrooms and toilets. (R. 287). We lifted the turbine casings for examination and did considerable work on the turbines, also some boiler work; we altered the deep tank into a cargo hold and converted the fore-peak storerooms into fuel oil tanks. Also, certain repairs were done to the passenger quarters and we scaled and painted all of the lower holds of the vessel to the deep load line of the vessel". (R. 288).

On page 19 of brief filed by counsel for the National Labor Relations Board they state that after the S. S. "Fairland" reached Mobile she speedily underwent the routine dry docking, was back in the water within thirty hours ready for service, but was kept idle for several days without any apparent reason. We do not think that the Record bears out this statement. In addition to the routine dry docking there was a very substantial amount of work done on the "Fairland". This was fully testified to by Mr. Walter Ingram, the Assistant Port Engineer of the Waterman Steamship Corporation, who testified as follows:

"When the 'Fairland' was dry docked she was cleaned and painted; her tail shaft was drawn for inspection and we re-wooded the stern bearing and replaced the tail shaft and installed the propeller; after she came off dry dock and immedi-

ately following the work just mentioned we installed rubber gaskets around the port holes in the officers' mess room, steward's room, second and third mates' room, radio room, second assistant and third assistant's room, and mates' and captain's room; installed seven hooks and four port lights; removed and examined and replaced the steering chain, overhauled and freed the steering chain sheaves on poop deck and on the well deck, port side; renewed the bushings, reamed out and renewed eleven engine bed bolts on the port and starboard side, forward end; re-bushed the steering wheel shaft in the control column in the pilot house; turned down the lathe motor commutator; renewed crank disc on spare winch crank shaft; remetaled I. P. cross head slipper and installed the same; repaired the ladder rail to the forecastle; renewed twelve port hole screens; renewed two sheave housing of steering gear chain on port side of after deck; built up and remachined two sheaves pins; built a locker in the linen locker for beer and coca-cola; repaired the springs on bunks in the crews quarters; and renewed one screen door in the chief mate's room and built one small box cover; that the cleaning and painting and the removing of the tail shaft could not be done unless the ship was on dry dock; and that drawing of the tail shaft and re-wooding of the stern bushing or stern tube or bearing, and the installing of the propeller, also had to be done while the ship was on dry dock" (R. 390-392).

Such statements as those above referred to, found on page 19 of brief filed by Counsel for Petitioner, are typical of their method of handling the Record in this case. They have picked out the testimony of one witness and because that witness had no knowledge on some particular subject, have taken the position that there is nothing in the Record to bear out the conten-

tion of the Waterman Steamship Corporation, without considering the testimony of other witnesses, which testimony was in no manner contradicted, and which testimony established without question the contention of the Waterman Steamship Corporation.

We see nothing inconsistent in the testimony of the witness Ingram and the witness Nicolson as to taking the S. S. "Fairland" off schedule. Ingram testified quite fully as to the repairs which had to be done on the S. S. "Fairland". Captain Nicolson testified that the S. S. "Fairland" was a few days late on its schedule and in order to get her back on her schedule they decided to put her back a week on schedule (R. 368). In other words, there are really two reasons why the S. S. "Fairland" did not sail promptly after reaching Mobile. Under the situation above referred to it was absolutely essential for her to go on dry dock for certain work and in addition to the dry docking the repairs above mentioned were also made and in order to get her back on her regular sailing schedule it was necessary for her to be taken out of commission due to the fact that she was already a few days late on her schedule.

In fact, the Trial Examiner found that it was necessary for the "Fairland" to be tied up at the particular time in question, and stated, in his Intermediate Report: "Thus the 'Fairland' could not have made another voyage without violating the regulations." (R. 63).

The Trial Examiner further, in his Intermediate Report, stated:

> "If they (the repairs) were of a kind that had to be made at that particular time there could be no suggestion of any conspiracy" (R. 62).

In reference to the S. S. "Bienville", the attorneys for petitioner, in their brief, commented upon the

fact that the attorneys representing the Waterman Steamship Corporation in the hearing before the National Labor Relations Board in New York City in the case of the American France Line, et al., and International Seamen's Union, had entered into a stipulation showing certain schedules of vessels and that according to this schedule the "Bienville" was supposed to depart on July 2nd and arrive at Panama City July 5th, Pensacola on July 8th, Gulfport on July 9th, and Mobile from July 11th to July 15th. However, this schedule was no doubt furnished to the New York attorneys of the Waterman Steamship Corporation earlier in the season and represented the then contemplated sailings. Evidently, the plans were subsequently changed, certainly as early as April, 1937, according to the testimony of Port Captain Reed, which is nowhere disputed. It was conclusively shown by respondent's Exhibit No. 25 that the "Bienville" was to be laid up at Mobile for repairs from July 7th, 1937, to July 30th, 1937, a period of twenty-three days. As above stated, this accurate chart which Captain Reed kept under the glass top of his desk, showing the sailing schedules and locations of all the Waterman ships from April, 1937, through August, 1937, is, of course, the very best evidence that could possibly be obtained as to the plans of the Waterman Steamship Corporation because this was the record by which the Port Captain, having these vessels in charge, governed his actions. The evidence showed without dispute that this record was made up certainly as early as April, 1937, and the dates given in the stipulation filed in the New York case above referred to were evidently taken from some earlier contemplated sailing schedules,—prior to the time that plans had been made to have this work done on the "Bienville."

In addition to the April to August sailing schedule, there was also introduced in evidence a notice which was issued by the Waterman Office at Mobile, Ala-

bama, bearing date of July 1st, 1937,—prior to the time that some members of the crews of the Waterman ships had joined the N. M. U.,—stating that the S. S. "Bienville" **was due to arrive** at Tampa on that day, which notice continued with the following statement:

> "From Tampa she will proceed to Pensacola and Mobile. Voyage No. 2 (the voyage which actually ended on July 6th), will end at midnight following completion of discharge of Mobile cargo, at which time vessel will go on inactive status for a period of twenty days."

In other words, at the time this notice was issued from the office of the Waterman Steamship Corporation, under date of July 1st, 1937, the "Bienville" had not even reached Tampa, Florida, but the "Bienville" **was due to arrive** at Tampa, Florida, sometime that day. The notice shows on its face that the "Bienville" had not yet reached Tampa, **but was expected.** Consequently, here we have a notice issued from the Waterman offices advising that the "Bienville" would go on inactive status for a period of twenty days, which notice was issued prior to the time that any one connected with the Waterman Steamship Corporation had any intimation whatsoever that any members of the crew of the "Bienville" were even contemplating joining the N. M. U.

It is, therefore, obvious that there is no justification whatsoever for the statement by the Board, in its decision, that:

> "The cancellation of the scheduled stops of the 'Bienville' between Tampa and Mobile, which was never explained by the respondent, indicates that the respondent knew immediately, or shortly thereafter, that the crews of the two ships had joined the N. M. U. in Tampa." (R. 111).

All of the evidence above commented upon clearly establishes the truth of the statement found in the testimony of Captain Nicolson, which is as follows:

> "The fact that the men changed to the N. M. U. had nothing to do with the tying up of the boat, and conceivably **we were not going to tie up any vessel as long as we could earn money with her.**" (R. 288).

In fact, it is only necessary to read the Record in this case to be convinced beyond the shadow of a doubt that the tying up of both the "Bienville" and the "Fairland" was pre-arranged and planned for long before any of the seamen who had previously belonged to the I. S. U. joined the N. M. U.

In the face of all of this conclusive evidence that the plans of the Waterman Steamship Corporation to lay up its ships for repairs were made long before the change of the union affiliations of the crews, and had absolutely nothing to do with such change by the crews, what evidence is there in the Record to support the Board's finding that the lay-up of the vessels was for the purpose of furnishing an excuse to discharge the crews? There is none. The Board's finding is based wholly upon a pre-conceived idea of the Board and its attorneys and Trial Examiner that the Waterman Steamship Corporation must be guilty of violating the National Labor Relations Act because some members of the N. M. U. saw fit to file a complaint against that Company.

Under this state of the evidence, the Board's finding is not only not conclusive, but is clearly erroneous and, we respectfully submit, should be entirely disregarded and set aside.

On page 12 of brief filed by counsel for the Labor Board they call attention to the fact that Captain Norville of the S. S. "Fairland" informed the crew of the ship that they could obtain employment if they quit the N. M. U. and joined the I. S. U. (R. 225-226). There is no controversy between us on this point as whenever the question came up, the members of the former crews of these two ships were advised that the Waterman Steamship Corporation under its contract was compelled to give preference of employment to members of the I. S. U. and so long as these members belonged to the N. M. U. rather than the I. S. U. they could not obtain employment with the Waterman Steamship Corporation unless the Waterman Steamship Corporation was going to breach its solemn contracts.

Pelletier.

So far as E. J. Pelletier, the Chief Steward or Chief Cook on the "Bienville," is concerned, while his employment was terminated at the end of the voyage in the same manner that the term of employment of the other seamen ended, in accordance with the provisions of the shipping articles, yet, the Waterman Steamship Corporation had already determined not to re-employ E. J. Pelletier at any time in the future because his services had been so unsatisfactory.

We are not going to review all of the testimony relative to Pelletier but think it sufficient to call the Court's attention to the fact that Pelletier was apparently unable to render the kind of services which the Waterman Steamship Corporation requires of its stewards. Captain Clarence Reed, the Port Captain of the Waterman Steamship Corporation, testified as to the trouble which they had had with Pelletier. It seems that Captain F. O. Lund was the Master on the "Bienville" on the voyage in question and that on or about June 20th, 1937, Captain Reed, the Port Captain, re-

ceived a letter from Captain Lund written from Havre, France, in which he referred to various matters, including the steward's department. Pelletier was the steward on this ship. Captain Lund wrote to Captain Reed as follows:

> "Anyhow this steward's department don't know how to serve people. Our cooks are claiming some overtime every day. They say that they can't get their work done in nine hours. There is nothing much I can do about it now. If I try to do anything the whole gang may walk out on me. If I had a steward that knew his job, I think things would be different. The second cook claims that if he don't start the fire in the stove at five o'clock A. M., they can't get the breakfast ready by seven-thirty o'clock A. M. The stove is old and don't work so good, but I think if they wanted to they could get their work done all right." (R. 479).

Captain Reed also testified that during all of his experience with the Waterman Steamship Corporation he had never received from any other captain from a foreign port a complaint about any other steward except Pelletier. (R. 479).

There was absolutely no justification for the National Labor Relations Board to take the position that the Waterman Steamship Corporation had determined to dispense with the services of Pelletier on account of union affiliations, because while the "Bienville" was in a foreign port, and long before there was any change from the I. S. U. to the N. M. U. on the part of any of the members of the crew of the "Bienville," the Waterman Steamship Corporation had received the letter of complaint above referred to from the Master of the "Bienville" relative to the unsatisfactory services of Pelletier, and Pelletier would undoubtedly have never been re-employed by the Waterman Steam-

ship Corporation, regardless of whether he had or had not changed his union affiliations.

Aside from the complaint made by Captain Lund of the way in which Pelletier conducted the Steward's Department, it will be recalled that there were some complaints about Pelletier before his ship sailed from Mobile. See the testimony of Harry Fagan, the Port Steward of the Waterman Steamship Corporation, found on pages 443-444 of the Record.

Of course, the National Labor Relations Board is not empowered to substitute its judgment for that of the employer in the conduct of its business, and the Wagner Act did not deprive the employer of its right to select or dismiss his employees for any cause, except where the employee was actually discriminated against because of his union activities or policies. In other words, the Wagner Act does not vest in the Labor Board any managerial authority.

> "The act does not compel the petitioner to employ anyone; it does not require that the petitioner retain in its employ an incompetent editor or one who fails faithfully to edit the news to reflect the facts without bias or prejudice. The act permits a discharge for any reason other than union activity or agitation for collective bargaining with employees."
>
> The Associated Press vs. N. L. R. B., 301 U. S. 103 (132), 81 L. Ed. 953 (960-961).

> "The Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them."
>
> N. L. R. B. v. Jones & Laughlin Steel Corp., 301 U. S. 1 (45), 81 L. Ed. 893 (916).

"The National Labor Relations Act was not intended to empower the Board to substitute its judgment for that of the employer in the conduct of his business. It did not deprive the employer of the right to select or dismiss his employees for any cause except where the employee was actually discriminated against because of his union activities or affiliation. It did not authorize the Board to absolve employees from compliance with reasonable rules and regulations for their government and guidance. The Act does not vest in the Board managerial authority. National Labor Relations Board v. Jones & Laughlin Steel Corp., 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed. 893, 108 A. L. R. 1352. The Board vaguely sanctioned certain statements of evidence by mingling them with its findings, without noting, as we have pointed out, that this evidence had been changed or modified upon cross-examination, or shown to be incorrect by other admitted or established facts. From a careful consideration of all the evidence the Court is satisfied that there is no substantial basis for the finding that the drivers were discharged because of their union activities."

N. L. R. B. v. Union Pacific Stages (9th C. C. A.), 99 Fed. (2d) 153 (177).

O'Connor

We will not go into details in discussing the complaint of C. J. O'Connor of the "Azalea City". The testimony of O'Connor and Ingram is quite clear as to the circumstances surrounding O'Connor's leaving the "Azalea City". O'Connor is a member of the Marine Engineers' Beneficial Association, a C. I. O. affiliate, and the evidence shows that the Waterman Steamship Corporation not only in no manner discriminated against members of the M. E. B. A. but it has a contract

with the M. E. B. A. for the furnishing to it of its engineers. O'Connor had some complaint about overtime work but that is not a matter to be properly considered in this case. There was certainly no discrimination against O'Connor because he was a member of the M. E. B. A. as all of the other engineers employed by the Waterman Company, and still retained in its service, are likewise members of this same organization. In fact, there was no proof whatsoever that there was any discrimination against O'Connor on account of his affiliation with any union, as alleged in the complaint.

As a matter of fact it appears that the inclusion in the complaint of any grievance that C. J. O'Connor of the "Azalea City" had was really an after-thought. The complaint was filed against the Waterman Steamship Corporation on the theory that it was in some way discriminating against the members of unions which were affiliated with the C. I. O. The National Labor Relations Board has totally failed to establish any such situation and the Record discloses, without conflict, that the Waterman Steamship Corporation throughout all of its dealings with its employees has, at all times, recognized as the appropriate bargaining unit whatever union represented the majority of its employees in each particular class. So far as O'Connor is concerned, the testimony of Mr. Walter Ingram, the Assistant Port Engineer of the Waterman Steamship Corporation, shows very clearly that O'Connor has really nothing to complain of. Mr. Ingram testified that when a man gets off for a vacation, as O'Connor did, when he is ready to go back to work he either reports to Mr. Ingram, the Assistant Port Engineer, or to Mr. Lemon, the Port Engineer, letting them know that he is ready to go back to work. When he does this his name is put on the list and as jobs come up he will be called for service (R. 389-390). Mr. Ingram further testified that Mr. O'Connor had never reported to him

that he was ready to go back to work, and while he was the one whom O'Connor would ordinarily report to, yet, so far as he knew, O'Connor never applied to any official of the Waterman Steamship Corporation requesting re-employment (R. 390). In fact, Mr. O'Connor really does not contradict the testimony of Mr. Ingram. O'Connor testified that he met Mr. Ingram on the street one day and asked him if he would give him another job, and Mr. Ingram replied that he didn't know. In fact, O'Connor says that Mr. Ingram didn't say he would give him a job and he didn't say he would not give him a job. O'Connor then admits that he never did go up to the office of the Waterman Steamship Corporation and ask for employment, and further admits that he never followed up the apparently casual conversation he had had with Ingram on the Street, to see whether or not he could obtain a job with the Waterman Company (R. 265). We respectfully submit to the Court that when a former employee goes off on a vacation and returns therefrom and never even goes around the office of his former employer to request a job, there could not possibly be any kind of duty on the part of such employer to look this man up and make him a formal offer of employment.

The situation existing relative to C. J. O'Connor and the relief, if any, to which he is entitled could not be more clearly expressed than in the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, where the O'Connor matter was disposed of by the following statement:

> "The evidence shows that there is no merit in the Board's finding that C. J. O'Connor, second assistant engineer on the S. S. "Azalea City", was discharged for his participation in a collective protest and for holding membership in the Marine Engineers' Beneficial Association. O'Connor was not discharged. The Port Captain did not dis-

charge him but directed him to take a vacation when he arrived in Mobile. This he did. The evidence tends to show that O'Connor was in the habit of taking voluntary vacations at frequent intervals. He has never returned and formally made request to be placed on active duty. He is entitled to pay for the number of days the company allows and grants for vacation to its employees in his class. Upon application he is also entitled, if he can satisfactorily qualify, to be offered reinstatement to his former position." (R. 541).

Allotment Of Shore Work.

After certain members of the crews of the two vessels in question severed their union affiliation with the I. S. U. and became members of the N. M. U., and were therefore no longer eligible for employment as seamen on vessels of the Waterman Company, the Waterman Steamship Corporation endeavored to minimize the loss suffered by these seamen by giving them employment in its shops. At its repair shops the Waterman Steamship Corporation conducted an open shop, having no contract with any union which compelled it to only employ the members of that union, and it was therefore able to give employment to the former members of the crews of these two ships who had joined the N. M. U. and were not eligible to sail as seamen when the S. S. "Bienville" and the S. S. "Fairland" were ready to go to sea. The fact that the Waterman Steamship Corporation gave employment to these members of the N. M. U. union at its shops shows conclusively that the Waterman Steamship Corporation was in no manner discriminating against members of that union, except when it was required by its contract with the I. S. U. to give preference of employment to members of the I. S. U.

There is absolutely no merit in the argument used by counsel for the National Labor Relations Board to

the effect that discrimination was shown by testimony of some of the employees that Walter Ingram, Assistant Port Engineer of the Waterman Steamship Corporation, advised some of the members of these crews who joined the N. M. U. that he could not give them employment until they took off the N. M. U. button and re-joined the I. S. U. In making such statements, Ingram was doing nothing more nor less than advising these members of the N. M. U. that the Waterman Steamship Corporation would have to recognize the validity of its contract with the I. S. U. and abide thereby. However, Walter Ingram at no time made any such remarks to these members of the N. M. U. so far as work on shore in the shops of the Waterman Steamship Corporation was concerned, and Walter Ingram and other employees of the Waterman Steamship Corporation arranged to give to these N. M. U. members employment in doing shore work in the shops of the Waterman Steamship Corporation wherever possible. We would like to here quote briefly from the testimony of Walter Ingram on this proposition, which testimony is as follows:

"Q. Mr. Ingram, Mr. Stewart testified here that you told him at one time that he could not get work on the ships of the Waterman Steamship Corporation as long as he had an NMU button. Did you have such a conversation with Mr. Stewart?

"A. I don't remember talking to him personally, but I did tell several of them that in practically those same words, due to the contract that we had with the ISU.

"Q. What was your reason for making that statement to these men?

"A. I was asked to.

"Q. You were asked by the men?

"A. I was asked by some of the men if they could sail in the ships if they belonged to the NMU.

"Q. What was the reason for your conclusion that they could not sail in those ships as long as they were members of the NMU?

"A. Well, according to our contract, we would have to take all the men from the ISU Hall." (R. 393).

There is no merit in the contention that these members of the N. M. U. who obtained work in the shops were discriminated against and laid off prematurely on account of N. M. U. affiliations. The testimony shows without conflict that as the work became slack the employees in the shop were laid off on a basis of the seniority system. In other words, the men who had worked in the shore repair shop for the shortest period of time were, under this system, the first to be paid off when the work slacked up. The testimony of Walter Ingram on this point is as follows:

"The hiring of the men in the shops was not generally under my supervision because the foremen hire their own men. I have general knowledge of the conditions with regard to that employment, but I don't hire the men myself. The system that was followed in determining what men should be allowed to work in these shops when work had to be done was as follows: As we do on any job, we start off with a big push and get everything going that we can, and get everything done as quick as possible, and as the job is completed, why, we lay the men off accordingly. In determining which employees shall be laid off we try to work the seniority system the best we can. I mean by that, that the men who have worked in the

shops for the longest periods of time are the ones who are given preference in continuing to work. The seamen who had previously been on the "Bienville" and the "Fairland" did not have at this time seniority in the shops over some of the other men who were retained after they were laid off." (R. 392-393).

Impartiality of Waterman Steamship Corporation As Between The Unions.

The testimony of Captain Nicolson, as well as the testimony of a number of other witnesses—and none of this testimony is disputed in any manner whatsoever—is that the Waterman Steamship Corporation has at all times recognized as the appropriate collective bargaining unit for these seamen that organization to which all or a great majority of these seamen belonged. For example, Captain Nicolson testified that several years ago the Waterman Steamship Corporation entered into an agreement with the Marine Engineers' Beneficial Association (sometimes herein referred to as M. E. B. A.), a C. I. O. affiliate, and both parties have lived up to this agreement and every engineer in the employ of the Waterman Company is a member of that organization, these engineers being 100 per cent organized and all of them being members of the M. E. B. A. (R. 295). Captain Nicolson, continuing his testimony, stated that as soon as the M. E. B. A. proved that they represented a majority of the engineers on the Waterman ships, the Waterman Company immediately met them as the appropriate collective bargaining agent to represent the engineers, and the Waterman Company then made a contract with the M. E. B. A. in accordance with the Wagner Act. Captain Nicolson also testified that neither he nor his company nor anyone to his knowledge had, at any time, tried to prevent any of the Waterman Com-

pany's employees from self-organization or tried to prevent the members of its crews from forming an association or a society or an organization, to bargain collectively through representatives of their own choosing nor had he or his company at any time tried to interfere with, restrain or coerce any of its employees (R. 295-6).

With further reference to the attitude which the Waterman Steamship Corporation has assumed towards unions, and in addition to the above quoted testimony of Captain Nicolson, we would like to call the Court's attention to the fact that Captain Nicolson also testified that the fact that some of these men had engaged in concerted activities with other employees for the purpose of collective bargaining with respect to rates of pay, etc., had nothing whatsoever to do with the termination of their employment, (R. 294). Captain Nicolson also testified that neither he nor any officer or anyone representing the respondent had at any time tried to persuade any of the seamen to join one union or another, nor had any officer of his company or anyone acting for it, at any time tried to interfere with the men on the ships, or restrain them, or coerce them in any manner as to what union they should belong to (R. 295). Captain Nicolson further testified that it has been entirely immaterial to his company as to what unions, societies, or organizations its seamen belonged to, so long as the respondent was not required to violate its contract (R. 295).

Furthermore, the evidence shows that when the "Fairland" was tied up and went on dry docks for certain repairs, inspection, etc., the three members of the crew of the "Fairland" who belonged to the I. S. U. and had never joined the N. M. U. were released and discharged according to the terms of the shipping articles, their contract of employment, along with the N. M. U. men and no discrimination of any kind was

shown against the members of either union. (R. 352, 395).

We have carefully searched the voluminous Record in this cause and have been unable to find any evidence whatsoever showing or tending to show, that anything that the Waterman Steamship Corporation has done, or anything it has failed to do, has either directly or indirectly, remotely or otherwise, in any manner burdened or obstructed interstate or foreign commerce, in violation of the expressed purpose of the National Labor Relations Act.

> National Labor Relations Act, section 1. (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. Supp., Sec. 151).

In support of our contention that the facts in this case were not such as to justify any action by the National Labor Relations Board and in further support of our motion to dismiss the complaint as last amended, filed against the Waterman Steamship Corporation, on the ground that it appeared conclusively from the evidence that neither interstate nor foreign commerce had ever been in any manner burdened or obstructed by the action of the Waterman Steamship Corporation, we wish to call the Court's attention to the testimony of Capt. N. Nicolson, the Executive Vice-President of the Waterman Steamship Corporation, which will be found on page 296 of the Record, as follows:

> "I might add that the Waterman Steamship Corporation is the only steamship company in the United States that has not had a delayed sailing of their vessels, or had any trouble within their vessels during the past three years. Every one of the Waterman Steamship Corporation's vessels on sailing schedule went out with first-class, competent, crews on the boat, it being the only ship-

ping company in the United States which can boast of that record. All of the crews were Union crews (I. S. U., affiliate of A. F. of L.)" (R. 296).

What further proof would anyone need of the fair dealing of the Waterman Company with its employees and of the fact that this Company had sincerely and faithfully lived up to all of its contracts with its employees?

There has been no question of a "company union" and there has been no refusal at any time or even any intimation or suggestion of a refusal at any time on the part of Waterman Steamship Corporation to deal with and bargain with the labor union which represented a majority of its employees in the particular class with which it was dealing.

We have not in any sense a case presented where the Waterman Steamship Corporation is objecting to its employees being organized in a labor union nor have we a case where the Waterman Steamship Corporation has tried to dominate its employees by forming a company union.

Before concluding the discussion of Point 3, showing that there is no sufficient evidence in the Record to sustain a finding of discrimination by Respondent against its employees in regard to hire or tenure of employment, we wish to call the Court's attention to a situation which was pointed out by the Trial Examiner, in his Intermediate Report. (R. 71, 72). Of the entire crews of the S. S. "Bienville" and the S. S. "Fairland" only five members of the crew of the "Bienville" and only one member of the crew of the "Fairland" appeared to testify at the hearing. (Id.). While it

is of course possible that some of these men were at sea at the time of the hearing, nevertheless, it appears to us that the fact that such a very small proportion of them voiced a complaint shows that the majority of the crews of both of these vessels felt that there had been no unfair discrimination. All of them had previously been members of the I. S. U. and were therefore familiar with the contract between Respondent and I. S. U. which required Respondent to give preference of employment to I. S. U. members when the ships were ready to sail again. These men must have realized that they had voluntarily relinquished any right to preferential employment when they changed from membership in the I. S. U. to membership in the N. M. U., and that Waterman Steamship Corporation could in no way be blamed for this situation.

POINT 4.

THERE IS NO SUFFICIENT EVIDENCE IN THE RECORD TO SUSTAIN THE BOARD'S FINDING THAT RESPONDENT VIOLATED SECTION 8 (1) OF THE ACT BY DISCRIMINATING IN THE ISSUANCE OF PASSES TO UNION REPRESENTATIVES.

In the amendment made on September 11th, 1937, to the decision of the National Labor Relations Board in the case of American France Line, et al., and International Seamen's Union of America, in which case the Waterman Steamship Corporation was a party, the Board held that fair conduct of elections requires that employers, to avoid discrimination as to elections, must issue passes, **for the purpose of soliciting membership**, promptly to representatives of rival unions, in equal numbers, or else that passes and admittance to

employers' vessels for such purpose be denied to representatives of both rival unions. We quote as follows from the opinion of the Board in that case:

> "For this reason, it now appears clearly to the Board, notwithstanding any arrangements heretofore suggested or approved, that the companies, in order to avoid discrimination in connection with participation in activities leading up to and surrounding the conduct of the elections, must refrain from the granting of an unequal number of passes to representatives of the I. S. U. and I. L. A. (A. F. L.) jointly and in the aggregate, on the one hand, and N. M. U. (C. I. O.) on the other hand; that is, no greater total number of passes should be issued to representatives **who purport to be soliciting the adherence of the unlicensed personnel with any unions affiliated with the American Federation of Labor than to those soliciting the adherence of unlicensed personnel with the National Maritime Union of the Committee for Industrial Organization.** We deem this essential to the fair conduct of the elections. Likewise, any arrangement under which representatives of one of the rival unions are permitted on board ship without passes, and representatives of the other rival union are denied passes and admittance, must not be made. * * * In order to prevent such discriminatory tactics it is necessary that employers should issue passes promptly to both sides, and in equal numbers, as above set forth, **or else that passes and admittance to the ships be denied to agents or representatives of both rival unions.**"

In re American France Line, et al., and International Seamen's Union of America, Vol. 3, Decisions and Orders of National Labor Relations Board 64 (78-79).

The Waterman Steamship Corporation decided to adopt the course of refusing to issue passes to board its ships to either of the rival unions for the purpose of soliciting membership in these unions, and carrying out this plan, the Waterman Steamship Corporation addressed to the Masters of all of its vessels a letter of instructions under date of July 13th, 1937, which was as follows:

"TO ALL MASTERS:—

In view of the fact that the National Labor Relations Board are now holding elections to determine whether the N. M. U. or the I. S. U. should represent the unlicensed members of our crews in collective bargaining, we have decided that we will not allow any delegates from either union to board our vessels for the purpose of soliciting memberships.

(Signed) N. Nicolson,

Executive Vice-President." (R. 298).

(Respondent's Exhibit No. 16.)

Under the terms of the contract between the Waterman Steamship Corporation and the I. S. U., the representatives of the I. S. U. had the right to go on board the ships of the Waterman Steamship Corporation for the purpose of collecting dues. (See Respondent's Exhibit No. 14, Article II, Section 3.) However, when the Waterman Steamship Corporation decided that it would not permit any soliciting for membership in unions to take place on board its vessels, the Waterman Company addressed a letter under date of July 12th, 1937, to Mr. William Ross, Agent of the International Seamen's Union at Mobile, Alabama, with copies of this letter being sent to Captain Reed and Mr. Ingram, which letter was as follows:

"July 12th, 1937.

Mr. William Ross, Agent,
International Seamen's Union,
Mobile, Alabama.

Dear Sir:

In view of the fact that the National Labor Relations Board is now holding an election to determine whether the N. M. U. or the I. S. U. should represent the unlicensed personnel of our vessels at collective bargaining, we have decided that until the election is held we will not allow members from the N. M. U. or your organization on board our vessels for the purpose of soliciting memberships.

(Signed) N. Nicolson,

Executive Vice-President."

(R. 298-299, Respondent's Exhibit No. 17).

In reply to this letter, this Agent of the International Seamen's Union addressed a letter to Captain N. Nicolson, Executive Vice-President of the Waterman Steamship Corporation, reading as follows:

"July 14th, 1937.

Captain N. Nicolson,
Executive Vice-President, Waterman Steamship Corporation, Merchants National Bank Building, Mobile, Alabama.

Dear Sir:

This will acknowledge the receipt of your letter dated July 12th, 1937.

In reply I would state that passes issued to the agents and delegates of the International Seamen's Union of America have not been used for the purpose of soliciting memberships. Our

agents and delegates board ships only in line with their duties to contact members of the International Seamen's Union of America, collect dues, and attend to matters relative to the work and agreements existing.

The election to be held under the National Labor Relations Board supervision does not in any way affect the agreements in force between the steamship companies and the International Seamen's Union of America.

(Signed) William Ross,

Agent, International Seamen's Union of America."

(R. 299, Respondent's Exhibit No. 18).

Counsel for the Board in their brief submitted in the Court below made the following statement:

"The Board has never contended at any stage of this proceeding that petitioner must allow union organizers aboard its ships. Both the order in the election proceeding, and the order in the present case reserve to petitioner the right to exclude **all** organizers."

Counsel for petitioner makes the following statement in the brief filed in this Court:

"Further, both the discrimination and all danger of strife could have been avoided by barring solicitation by either union, as respondent purported to do." (Petitioner's Brief, p. 42).

This is exactly what respondent did do. It excluded all organizers and barred solicitation by either union. Counsel for petitioner state that respondent made but a pretense of halting solicitation for the I. S. U. How-

ever, they fail to point out any evidence in the re
—and there is none—to show that there was an
tual solicitation of membership by I. S. U. repre
tatives.

The only testimony as to personal knowledge o
activities of the I. S. U. representatives on boar
ships is the testimony of Captain Norville, Mast
the Steamship "Fairland", which testimony ma
summarized as follows:

> "I received a letter dated July 13th, 1937,
> Captain N. Nicolson addressed 'To All Mas
> being Respondent's Exhibit 16 in this case.
> accordance with the instructions in this let
> told the Chief Officers to comply with that l
> and to the best of my knowledge it was ca
> out. I showed the Chief Officer the letter
> instructed him to carry out the orders in th
> ter. In other words I instructed him that I w
> not allow any representatives of either the I.
> or the N. M. U. to come on board the vess
> the purpose of soliciting memberships in e
> union. So far as I know, no member of the
> U. has solicited memberships on board any v
> of which I have been in charge at any time
> I received this letter.
>
> "Generally speaking, representatives of t
> S. U. come on board the ships under the p
> that they are allowed, and collect dues whe
> vessel is paying off. I am generally present
> time the men are being paid off, and to the
> of my knowledge the activity of the I. S. U. r
> sentatives at this time is the collection of
> At no time since I received the letter of July
> 1937 (Respondent's Exhibit No. 16), did I ev
> any representative of the I. S. U. on boar
> ship of which I was in charge, doing any

other than collecting dues from members of the I. S. U." (R. 327-328).

the place of any evidence, counsel for Petitioner rently rely upon the following statement which make in the brief for petitioner filed in this Court:

"It is contrary to human experience to assume that solicitation would not go on merely because of executive pronouncement that representatives of the I. S. U. were to be given freedom of the ships solely to collect dues." (Petitioner's Brief, p. 42).

rtainly, the National Labor Relations Act was r intended to confer upon the Board the power e its assumptions and conclusions of this nature basis for its findings of facts, in substitution for rete and substantial evidence.

unsel for Petitioner assume in their brief that ondent does not deny that there would be a vio- n of section 8 (1) of the National Labor Relations f there had been any discrimination in the grant- f passes to union organizers to board its ships for purpose of soliciting memberships. As the evi- e shows without any contradiction whatsoever there was no discrimination in this respect, it is aps unnecessary to discuss this particular point. ever, we do wish to make it clear that throughout proceedings Respondent has contended that ier section 8 (1) nor any other part of the National r Relations Act can have the effect of forcing the ers of a vessel to allow union organizers, who are employees, to come on board its vessels for the ose of soliciting union memberships. Pertinent isions of section 8 (1) of the National Labor Re- ns Act are as follows:

"It shall be an unfair labor practice, for an employer—

"(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7."

National Labor Relations Act, section 8 (1). (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C. Supp. IV, Sec. 158.)

We respectfully submit to the Court that it is the purpose of the above quoted provision of the Act to protect employees rather than to protect outside union organizers. We do not believe that it can be said that the refusal to allow union organizers to board Respondent's ships can in any way have the effect of interfering with the Respondent's employees in the exercise of their rights to self-organization and collective bargaining.

We believe that a reading of the Record in respect to the matter of issuing passes to union representatives will show conclusively that the Respondent has made no discrimination between the rival unions in violation of the Act. The Board has recognized the existing contract with the I. S. U. as valid and binding, and, under this contract, Respondent could not refuse to allow the I. S. U. representatives to come on board its ships for the purpose of collecting dues. However, Respondent positively and consistently took every step which it possibly could take to prohibit any representatives of either union to come on board its ships for the purpose of soliciting union memberships. We respectfully submit to the Court that the United States Circuit Court of Appeals for the Fifth Circuit was correct in its conclusion in this case, stated as follows:

"The Company was within its right when it forbade the representatives of the unions to come

aboard its vessels for the purpose of soliciting memberships. It played no favorite and the Board erred in its order in this respect." (R. 540).

Waterman Steamship Corporation v. National Labor Relations Board, 103 Fed. (2d) 157.

CONCLUSION

In conclusion we wish to summarize briefly as follows:

(1) The finding of the Board that the contract between the Petitioner and the I. S. U. did not bind the Petitioner to give preference of employment to members of the I. S. U., when employing new crews for the S. S. "Bienville" and the S. S. "Fairland", is contrary to law, and is not supported by any substantial evidence.

(2) The employment of the seamen on the S. S. "Bienville" and the S. S. "Fairland" was terminated in compliance with statutory requirements relating to seamen and shipping articles, and the finding by the Board that the discharge of these seamen was due to discrimination because of union affiliation, is contrary to law and is not supported by any substantial evidence.

(3) There is no substantial evidence in the Record to sustain the Board's finding that the Waterman Steamship Corporation discriminated against any of its employees in regard to hire or tenure of employment in violation of the National Labor Relations Act.

(a) There is no evidence in the Record to support the Board's finding that the Respondent ar-

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ranged the lay-ups of the vessels for the purpose of facilitating discriminatory discharges of the crews, but there is abundant and undisputed evidence that these lay-ups were for the purpose of making repairs which had been planned long in advance of any change in union affiliation.

(b) The Record clearly shows that Respondent at all times was fair and impartial as between the rival unions, and that it followed the practice of bargaining collectively with the representatives of the majority of its employees in appropriate bargaining units, regardless of the union affiliation of such representatives.

(c) The finding of the Board that Petitioner discriminated against C. J. O'Connor in respect to hire and tenure of employment because of union activities or affiliation, is not supported by any substantial evidence.

(4) The finding of the Board that the respondent discriminated against N. M. U., in violation of the National Labor Relations Act, by its refusal to issue passes to either N. M. U. or I. S. U. for the purpose of soliciting union memberships, is contrary to law and is not supported by any substantial evidence.

The evidence shows conclusively that Waterman Steamship Corporation dealt fairly and impartially with the rival unions, in conformity with the National Labor Relations Act. As stated by the court below, "the trouble was not of the making of the Waterman Steamship Corporation. It emanated from a fight between the unions and nothing more. As they fought to oust each other the Waterman Steamship Corporation became the victim." (R. 540).

We respectfully submit that the findings of the Board in this case are "based on suspicion and not on the evidence," as stated by the court below.

Wherefore, Respondent respectfully submits to the Court that the decision of the court below, setting aside and denying enforcement to the order of the Board (except as there modified), should be affirmed.

Respectfully submitted,

Gessner T. McCorvey,

Mobile, Alabama.

Attorney for Waterman Steamship Corporation.

C. A. L. Johnstone, Jr.,
Mobile, Alabama.

McCorvey, McLeod, Turner & Rogers,
Mobile, Alabama.
Of Counsel.

I, Gessner T. McCorvey, do hereby certify that on this the 2nd day of December, 1939, I mailed copies of the foregoing brief, postage prepaid, to Robert H. Jackson, Esq., Solicitor General of the United States, Washington, D. C., and to Charles Fahy, Esq., General Counsel of National Labor Relations Board, Washington, D. C., counsel for Petitioner.

Executed this 2nd day of December, 1939.

(Gessner T. McCorvey).

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 193

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

WATERMAN STEAMSHIP CORPORATION,
Respondent.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

SUPPLEMENTAL BRIEF AND ARGUMENT OF WATERMAN STEAMSHIP CORPORATION.

GESSNER T. McCORVEY,
Attorney for Waterman Steamship Corporation.

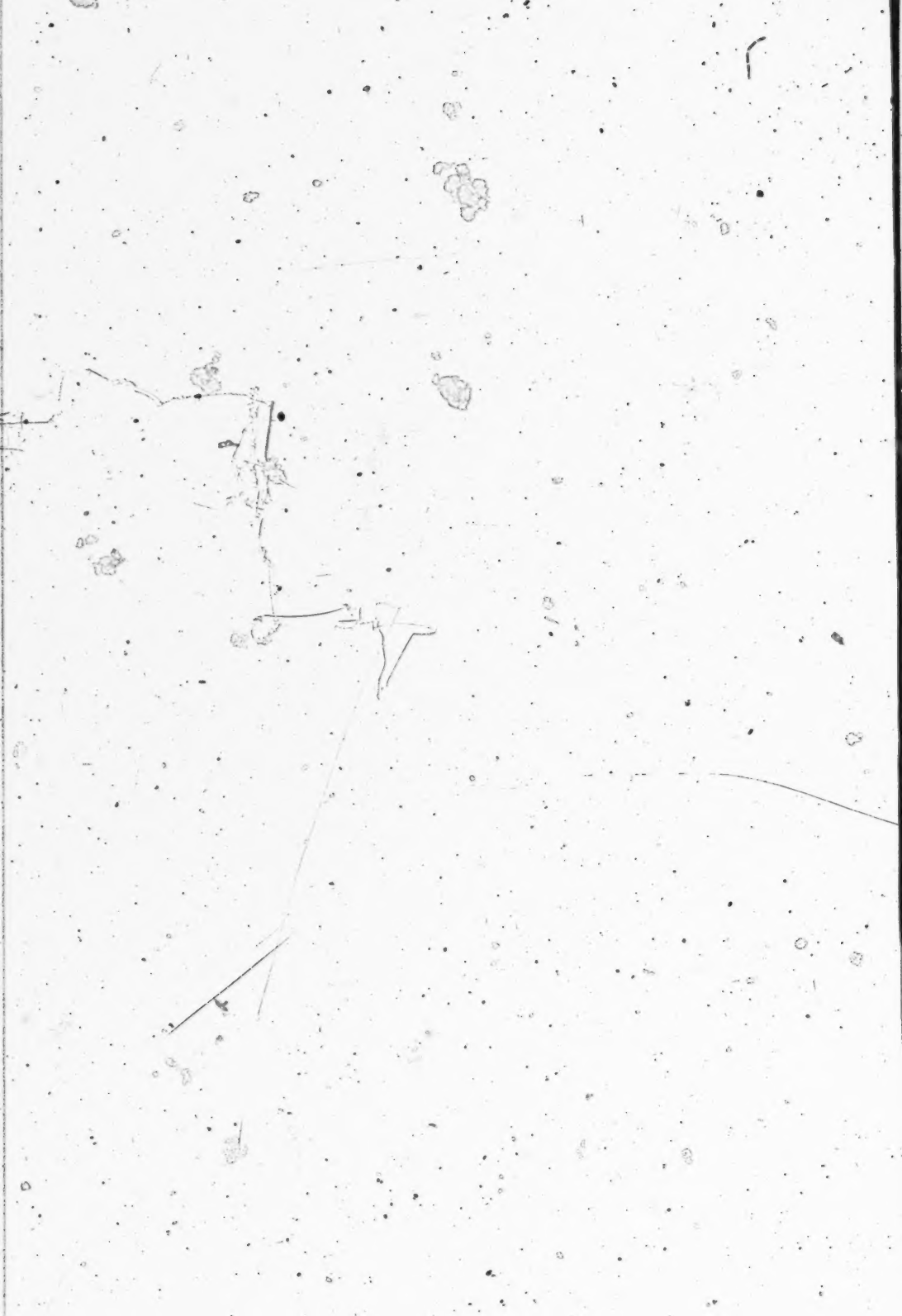
C. A. L. JOHNSTONE, JR.,
and
McCORVEY, McLEOD, TURNER & ROGERS,
of Counsel.

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On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

SUPPLEMENTAL BRIEF AND ARGUMENT OF WATERMAN STEAMSHIP CORPORATION.

Owing to the fact that during the oral argument certain matters were presented and certain questions were propounded by the Court, which were not fully discussed in our brief filed on behalf of respondent, the Court granted us leave to file this supplemental brief.

In his closing remarks, and in answer to a question propounded to him by one of the Justices, Mr. Robert B. Watts, attorney for the National Labor Relations Board, stated

that the Record shows that representatives of the I. S. U. were permitted to come on board vessels of the Waterman Steamship Corporation at all times and contact the members of the crew. In support of this statement, Mr. Watts cited to the Court (R. 179) where E. J. Pelletier, one of the witnesses called on behalf of the National Labor Relations Board, testified as follows:

> Q. Were you a member of the I. S. U. when you made this second trip on the "Bienville," that you have told us about?
> A. Yes, sir.
> Q. And while you were a member of the I. S. U. on that boat, do you know whether the I. S. U. representatives were permitted to come on board?
> A. At all times.
> Q. Were they permitted to contact the men?
> A. Yes, sir.
> Q. Was there anyone from the company accompanying these I. S. U. representatives to see that they only collected dues?
> A. No, sir.
> Q. There was no one to see that they did not do any organization work?
> A. I do not recollect seeing anyone with them.
> Q. Do you know whether or not I. S. U. representatives solicited members while they were on board?
> A. I could not say.

It will be noted from the foregoing that Pelletier was testifying as to what the practice had been during the time he was a member of the crew of the S. S. Bienville, and this, of course, was prior to the time that Captain Nicholson had given written instructions under date of July 13, 1937, to the masters of all of the Waterman Steamship Corporation's ships to the effect that the Waterman Corporation would not allow any delegates from either union to board their vessels for the purpose of soliciting memberships. Consequently, that part of the record cited by

Mr. Watts had no bearing whatever on the question propounded to him by one of the Justices as no one has ever contended that prior to the time that these written instructions were given by Captain Nicholson representatives of the I. S. U. were not permitted to solicit memberships in their union on board ships of the Waterman Corporation.

The question was asked by the Court as to whether or not there was any affirmative act on the part of the Waterman Steamship Corporation terminating the employment of the seamen, other than the discharge before the United States Shipping Commissioner. Mr. Watts took the position that there was an affirmative act of discharge of all of the unlicensed personnel in addition to the "signing off" of the articles. In support of his position he cited the remarks made by Captain Reed, shown on page 226 of the Record. It will be noticed that this statement by Captain Reed was in reply to a question by the seaman as to whether he would be allowed to go out again when the ship sailed. There may have also been other scattered instances in which the question was asked by a seaman as to whether or not he could be employed for the next voyage and in each case the reply was to the effect that because of the contract with the I. S. U., the seaman could not be employed on the next voyage as long as he remained a member of the N. M. U. There is no evidence whatsoever in the record that the respondent took any affirmative step in laying off or discharging the entire unlicensed personnel. It was understood both by the steamship company and by the seamen that the employment had terminated when the men were discharged before the United States Shipping Commissioner. The scattered instances in which officials of the company stated to the seamen that they could not be reemployed for the next voyage would certainly not amount to such an affirmative act. There is an exception to this statement in the case of Pelletier, as there was an additional reason for the termination of his employment.

In support of his contention that the employment of seamen is continuous even though they have signed articles providing for one voyage only, Mr. Watts referred to the testimony of Pelletier. Pelletier was necessarily an interested witness. Mr. Watts stated and reiterated in reply to questions from the Court that there was an absolute uniformity in the testimony of the witnesses as to the continuity of employment and that there was no testimony to the contrary. We wish to call to the Court's attention testimony of Captain R. G. Dobbin, on pages 428, 429 of the Record. Captain Dobbin was United States Shipping Commissioner at Mobile and an absolutely disinterested witness. He testified that he had had seafaring experience for approximately twenty-five years and that he had been Shipping Commissioner for approximately nine years (R. 428). We will not prolong this brief by quoting this testimony in full, but respectfully direct the Court's attention to all of this testimony on the last half of page 428 and the first half of page 429 of the Record. His testimony may be summed up by the following question and answer:

> Q. And is it customary and generally understood in maritime circles that when a seaman signs for one voyage that he, when the voyage is terminated, and he signs before the United States Shipping Commissioner, that his term of employment is ended?
>
> A. Oh, his term is through; there ain't no question about that. (R. 429)

In connection with the point as to the continuity of employment and the point as to whether or not the employment of the seamen is terminated by discharge from the shipping articles, Chief Justice Hughes asked the following question in the course of oral argument: If a seaman should be injured after he has "signed off" shipping articles and has been discharged by the United States Shipping Commissioner, but before he has signed articles on a

subsequent voyage, would he be entitled to maintenance and cure?

From the cases which we have been able to find we believe that the seaman would not be entitled to maintenance and cure under such circumstances.

The only two cases which we have been able to find on this proposition are *The Bouker No. 2* (2d C. C. A.), 241 Fed. 831 (833), and *Hennessy v. M. & J. Tracy, Inc.* (4th C. C. A.), 295 Fed. 680, (681). In the *Bouker* case there was raised the question as to when a seaman would be entitled to maintenance and cure. The court, after stating that he is entitled to maintenance and cure when "he falls sick or is wounded in the service of the ship" proceeded further to define this situation as follows:

> "We may state our opinion that a seaman 'falls sick, or is wounded, in the service of the ship,' if such misfortune attacks him while he is attached to the ship as part of her crew. It is not necessary that the wound or illness should be directly caused by some proven act of labor; it is enough that he was, when incapacitated, subject to the call of duty as a seaman, *and earning wages as such.*"
>
> *The Bouker No. 2* (2d C. C. A.), 241 Fed. 831 (833).

In the *Hennessy* case, the facts showed that the seaman received his pay and discharge, went down to his quarters to get his belongings, and in leaving the ship immediately thereafter, slipped on a ladder and was injured. The court, in holding that the seaman was entitled to maintenance and cure, made the following statement:

> "Nevertheless, we think, the obligation of the ship to furnish maintenance and cure attaches to accidents which happen in the brief interval between the time a seaman is paid off and formally discharged and the subsequent time at which, in ordinary course, he actually gets physically away from her. He went on her

as a seaman, and for the purpose in hand he did not cease to be one until he was safely off her."

Hennessy v. *M. & J. Tracy, Inc.* (4th C. C. A.), 295 Fed. 680 (681).

The inference from the foregoing opinion is clear that while the seaman may still have the right to maintenance and cure until he could safely get off the ship immediately after being discharged, he would not have the right to maintenance and cure after he safely left the ship.

During the course of oral argument, Mr. Justice Reed mentioned the fact that testimony shows that when the Waterman Steamship Corporation desired to hire a seaman who had formerly made a voyage on the same boat, it could do so without having to hire the man through the I. S. U. hiring halls. This fact does not in any way show that the employer and the union regarded the employment as continuous. The contract between the employer and the union required the employer, "as vacancies occur," to give preference of employment to members of the I. S. U. (Respondent's Exhibit No. 14, Article II, Section 1.) The contract did not require the employer to go to the I. S. U. hiring halls in order to give such preference of employment. The Board does not dispute the fact that prior to the shift of allegiance on July 2, 1937, the respondent's unlicensed personnel were 100 per cent members of the I. S. U. The employer could, therefore, arrange to fill any vacancy by hiring any of its former employees, and comply with the provision to give preference of employment to I. S. U. members.

Under these circumstances, this custom followed by the employer and the union does not show that "vacancies" within the meaning of the contract did not occur each time a crew "signed off" the articles, and was discharged.

In his oral argument, Mr. Watts accused counsel for respondent of speaking "in vacuo". He took the position

that counsel for respondent were merely making assertions that there was no evidence to support certain findings of the Board, although he contended that such evidence was in the Record, and cited some of the evidence which, as he contended, supports the findings of the Board. The statement that there is no evidence to support a finding is a negative statement and to go through the Record reciting the evidence which is there in order to show the absence of evidence to support the findings of the Board would require much space and time. We believe that when the Court reads those portions of the Record referred to in petitioner's brief, in the light of the circumstances of the case as pointed out in respondent's brief, it will be quite apparent that the inferences drawn by the Board are unfounded. We pointed out in our original brief, and have also pointed out in this brief, several instances in which statements made by counsel for petitioner are not supported by the Record. These instances are typical of the statements made throughout the brief of petitioner. Certain parts of the Record are referred to which may, at first glance, seem to support the inference drawn by the Board. But when these parts of the Record are read with their context, and in the light of all of the circumstances surrounding the case, it immediately becomes apparent that the inference by the Board is not at all justified by the evidence.

During the oral argument much stress was laid by counsel for the Labor Board on the fact that Captain Nicholson had testified that certain steel had been ordered for use in repairing the S. S. Bienville, but later on when Captain Nicholson was shown a letter referring to the Azalea City, he testified that the Azalea City and the S. S. Bienville were sister ships and that *when the material in question was ordered*, he was not sure whether the plans were to use this material on the Azalea City or on the Bienville (R. 372), as pointed out in our original brief. The written records showing the location and disposition of each of the

Waterman ships during the period from April 1937 through August 1937 were kept by Captain Clarence Reed, who was captain of the port and kept accurate written records as to the location of each of the Waterman ships and where they were due at certain periods. This record was fully explained in respondent's Exhibits Nos. 24 and 25.

It is true that in the *American France Line et al.* case pending before the National Labor Relations Board that a stipulation had been filed in New York by the New York attorneys for the Waterman Steamship Corporation, which stipulation showed that the Bienville was to depart on July 2 and would be at Panama City on July 5, at Pensacola on July 8, at Gulfport on July 9 and Mobile on July 11 to July 15 (R. 371). Captain Nicholson testified that he did not know anything about the stipulation which was filed with the National Labor Relations Board in New York. However, Captain Nicholson reiterated his statement that he knew several weeks beforehand, and in the month of May, that they had planned to repair the Bienville (R. 371). What probably happened is that the stipulation for use in the *American France Line, et al.* case was made up at the time this proceeding commenced showing the scheduled sailings some months in advance, and the New York attorneys apparently did not know of the change in the plans relative to the Bienville and merely used the old schedule. Certainly, in view of Exhibits Nos. 24 and 25, it cannot be seriously contended that plans had not been made to lay up the Bienville for repairs long prior to her arrival in Mobile and prior to the time there had been any shift of union affiliations by some members of the crews of these vessels.

During oral argument, the Court asked whether or not there would be a violation of the Act in the event a steamship company should bring a ship back to its return port sooner than previously scheduled, for the purpose of discharging the crew (for union activities) sooner than would

otherwise occur. In this case it is not contended by the Board that the "Fairland" was brought into Mobile any sooner than its normal course. In connection with the "Bienville", the Board contends that stops between Tampa and Mobile were cancelled, and attempts to find significance in the fact that the purpose of this cancellation of stops was not explained by the respondent. There was never any necessity at the hearing for respondent to explain the purpose or reason for the cancellation. The letter ordering the cancellation of stops, sent by the Port Captain (Respondent's Exhibit No. 25) is dated July 1, 1937, indicates in the body thereof that it was written before the arrival of the "Bienville" in Tampa, and the Board never offered any evidence that this was not its true date. The Board found as a fact that the change of union affiliation by the crew of the "Bienville" took place on July 2, 1937, (R. 108), *after the letter was written.*

The respondent had no knowledge of change of affiliation before July 2, 1937, at the earliest. There is testimony by a seaman that the crew discussed in Havre, France, the possibility of making a change to the N. M. U., but there is absolutely no evidence which we can find indicating that any responsible officer or official of respondent knew this fact..

While we referred in our original brief to the fact that it was entirely immaterial to the Waterman Steamship Corporation what unions its employees belong to, yet inasmuch as during the oral argument one of the Justices inquired as to what, if any, declarations were made by the executives of the Waterman Steamship Corporation on this point, we think it well to here set out a few extracts from the testimony of Captain Nicholson from the Record, clearly showing the position taken by the Waterman Steamship Corporation.

> A. The fact that the men changed to the N. M. U. had nothing to do with the tying up of the boat and con-

ceivably we were not going to tie up any vessel as long as we could earn money with her. (R. 288)

Q. Now, captain did the fact that these employees, or some of them, engaged in concerted activities with other employees for the purpose of collective bargaining with respect to rates of pay, and so forth, have anything whatever to do with the termination of their employment?

A. No, sir.

Q. Even after you knew they joined the N. M. U., you still permitted them to stay on board the ship until their voyage was over?

A. Correct. (R. 294)

Q. Captain, have you, or has any officer, or anyone representing your company, so far as you know, at any time tried to persuade any of the seamen to join one union or another?

A. No, sir, we have not.

Q. Have you or any officer of the Waterman Steamship Corporation, or anyone acting for it, to your knowledge at any time tried to interfere with the men on the ships, or restrain them, or coerce them in any manner as to what union they should belong to?

A. No, sir. (R. 295)

As to the smoothness and lack of friction with which the Waterman Steamship Corporation has at all times dealt with its employees, we might call the Court's attention to the further testimony of Captain Nicholson, found on page 296 of the Record, as follows:

A. I might add that the Waterman Steamship Corporation is the only steamship company in the United States that has not had a delayed sailing of their vessels, or had any trouble within their vessels during the past three years. Everyone of the Waterman Steamship Company vessels on sailing schedule went out with first class, competent crews on the boat, they being the only shipping company in the United States who can boast of that record. (R. 296)

It was owing to testimony of this kind that at the conclusion of the testimony, as attorneys for the Waterman Steamship Corporation we made the following motion, which was denied by the trial examiner:

> Now, comes the Waterman Steamship Corporation, the respondent in the above styled cause, and all the evidence having been introduced and all parties having rested and the evidence showing without dispute that the Waterman Steamship Corporation, under its contract with the International Seamen's Union of America, an affiliate of the American Federation of Labor, has employed on its ships members of the said International Seamen's Union of America, and the record further disclosing without controversy that the Waterman Steamship Corporation, during the existence of its contract with the said International Seamen's Union of America, has never been delayed in any manner whatsoever in the sailing of any of its large fleet of vessels, and the National Labor Relations Act, under which this proceeding is instituted, being termed "An Act to diminish the causes of labor disputes burdening or obstructing interstate or foreign commerce, etc.," and it now appearing conclusively from the evidence that neither interstate nor foreign commerce has ever been in any manner burdened or obstructed by the action of the Waterman Steamship Corporation, the respondent, now complained of, the said Waterman Steamship Corporation now moves that the complaint as last amended filed against it in this proceeding be dismissed on the following separate and several grounds:
>
> 1. For that the evidence fails to show that the respondent has been guilty of any violation of the National Labor Relations Act.
>
> 2. For that the evidence fails to show that the respondent has been guilty of any unfair labor practices as defined in the National Labor Relations Act.
>
> 3. For that the evidence fails to show that the respondent has interfered with, restrained, or coerced

employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

4. For that the evidence fails to show that the respondent has by discrimination in regard to hire or tenure of employment or any term or condition of employment encouraged or discouraged membership in any labor organization.

5. For that the evidence shows that the respondent, at all times mentioned in the complaint, was bound by a contract recognized as valid by the National Labor Relations Act to give preference of employment to members of the International Seamen's Union.

6. For that the evidence shows that the refusal of the respondent to grant passes on board its ships to organizers of the National Maritime Union did not have the effect of interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act. (R. 528-529)

We respectfully submit to the Court that the decision of the United States Circuit Court of Appeals for the Fifth Circuit setting aside and denying enforcement of the order of the Board (except as there modified) should be affirmed.

Respectfully submitted,

GESSNER T. MCCORVEY,
Mobile, Alabama,
Attorney for Waterman Steamship Corporation.

C. A. L. JOHNSTONE, JR.,
Mobile, Alabama.

MCCORVEY, MCLEOD, TURNER & ROGERS,
Mobile, Alabama,
Of Counsel.

I, C. A. L. Johnstone, Jr., do hereby certify that on this the 4th day of January, 1940, I mailed copies of the foregoing brief, postage prepaid, to Robert H. Jackson, Esq., Solicitor General of the United States, Washington, D. C., and to Charles Fahy, Esq., General Counsel of National Labor Relations Board, Washington, D. C., counsel for Petitioner.

Executed this .... day of January, 1940.

.....

(C. A. L. Johnstone, Jr.)

FILE COPY

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CHARLES ELMORE CROPLEY
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 193

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

Vs.

WATERMAN STEAMSHIP CORPORATION,
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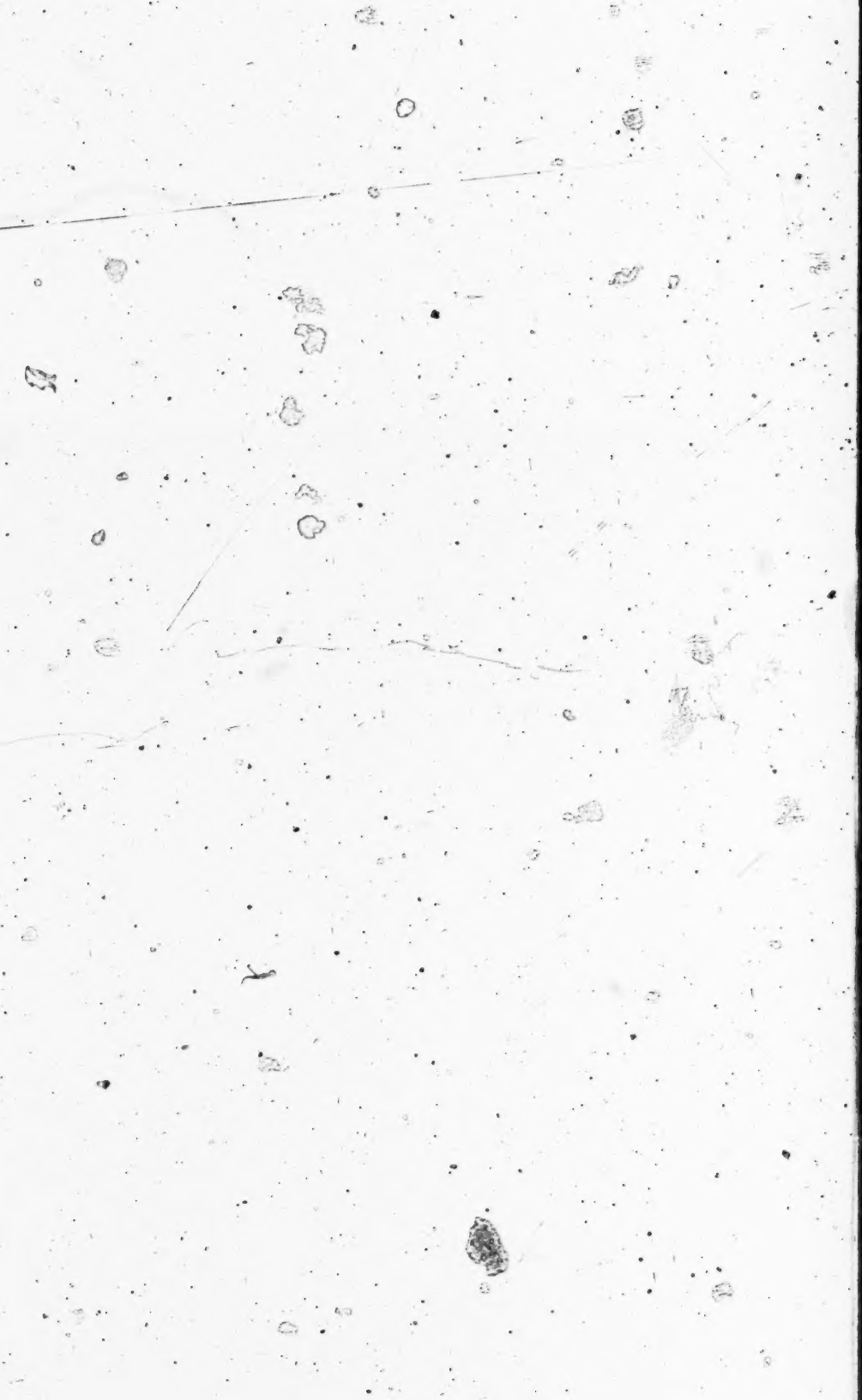
PETITION FOR REHEARING

AND

BRIEF AND ARGUMENT OF WATERMAN STEAMSHIP CORPORATION IN SUPPORT THEREOF.

GESSNER T. McCORVEY
Attorney for Waterman Steamship Corporation

C. A. L. JOHNSTONE, JR.,
and
McCORVEY, McLEOD, TURNER & ROGERS,
Of Counsel.



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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 193

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

Vs.

WATERMAN STEAMSHIP CORPORATION,
Respondent.

PETITION FOR REHEARING.

TO THE SUPREME COURT OF THE UNITED STATES AND TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES THEREOF:

Comes now the Waterman Steamship Corporation, the respondent in the above styled cause, and presents this, its petition for a rehearing in the said cause, and in support thereof respectfully shows unto the Court as follows:

I.

The decision of the Court in said cause fails to give effect to the well established principle of law that a

written and express contract cannot be controlled or varied or contradicted by a usage or custom, and that usage or custom cannot make a contract where there is none.

II

The opinion of the Court in said cause indicates that the Court erroneously assumed that there was a finding of fact by the National Labor Relations Board which afforded a legal basis for the conclusion of the Board that there was a continuous term of employment of the seamen regardless of shipping articles, although in truth and in fact there is no such finding of fact by the Board, and the said conclusion of the Board is based solely upon the erroneous conclusion of law that a general usage or custom can vary or alter the provisions of a written contract of employment or can make a contract of employment where none otherwise existed.

III

The conclusion of the said Board that there was a continuous term of employment regardless of shipping articles, which conclusion was upheld by the decision of the Court in the said cause, is not supported by any finding of fact by the said Board that there was in fact any contract of employment in existence providing for such continuous term, but is based solely upon the erroneous conclusion of law that a general custom or usage can vary or alter the provisions of a written contract of employment or can make a contract of employment where none otherwise existed.

IV.

The opinion of the Court in said cause indicates that the Court upheld the order of the Board upon the

theory that the Court was bound by statute to give conclusive effect to the findings of fact made by the Board, but, in so holding, the Court failed to consider that the conclusion of the Board that there was a continuous term of employment of the seamen regardless of the shipping articles is not based upon a finding of fact but upon the erroneous conclusion of law that a general custom or usage can vary or alter the provisions of a written contract of employment or can make a contract of employment where none otherwise existed.

V.

The opinion of the Court indicates that if the Court had not reached the conclusion that the employment of the seamen in question was continuous, the decision of the Court as to the alleged discriminatory discharges would have been different.

WHEREFORE, upon the foregoing grounds it is respectfully prayed that this petition for a rehearing be granted, and that the opinion and judgment of this Court heretofore rendered in this cause be set aside and that an order now be entered by this Court affirming the judgment of the United States Circuit Court of Appeals for the Fifth Circuit.

Respectfully submitted,

Gessner T. McCorvey,
Mobile, Alabama.
Attorney for Waterman Steamship Corporation.

C. A. L. Johnstone, Jr.,
Mobile, Alabama.

McCorvey, McLeod, Turner & Rogers,
Mobile, Alabama,
Of Counsel.

I, Gessner T. McCorvey, Attorney for Waterman Steamship Corporation, do hereby certify that the foregoing petition for a rehearing, and the accompanying brief and argument in support thereof, are presented in good faith and not for delay.

Executed this 5th day of March, 1940.

(Gessner T. McCorvey).

Subscribed and sworn to before me by Gessner T. McCorvey, on this the 5th day of March, 1940.

(O. H. Swinson)

Notary Public, Mobile County, Alabama.

IN THE

SUPREME COURT OF THE UNITED STATES

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NATIONAL LABOR RELATIONS BOARD,
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WATERMAN STEAMSHIP CORPORATION,
Respondent.

ON PETITION FOR REHEARING

BRIEF AND ARGUMENT OF WATERMAN STEAMSHIP CORPORATION IN SUPPORT OF PETITION FOR REHEARING

The decision of this Court, as set forth in the opinion of Mr. Justice Black, absolutely revolutionizes the heretofore generally accepted construction of the relationship existing between steamship companies and the seamen employed to operate their steamships. The opinion of Mr. Justice Black has placed on the shipping articles commonly in use by the American Merchant Marine a construction which we are confident no steamship company ever dreamed of as being a proper construction, and a construction which we do not think any seaman sincerely contended for.

Not only is the Waterman Steamship Corporation vitally interested in seeing a proper construction placed upon the shipping articles under which it has employed countless thousands of seamen to operate its large fleet of ships, but practically every steamship company in America is interested in the same proposition. As an illustration of the number of steamship companies which are interested in this proposition, it will only be necessary for us to point out to the Court that in Article VII, Sec. 2, of the contract entered into between the Waterman Steamship Corporation and the I. S. U. (Respondent's Exhibit No. 14) there are forty-two other steamship companies which have entered into identically the same contract, and this contract only includes the Atlantic and Gulf Districts,—there no doubt being many other steamship lines operating on the Pacific Coast which are equally interested in having a proper construction placed upon these shipping articles which are universally used by the American Merchant Marine.

All of the seamen involved in this case signed shipping articles for a definite and fixed voyage back to the port of discharge, which was Mobile, Alabama. The opinion of Mr. Justice Black holds, in effect, that when these seamen sign these shipping articles and make their voyage and return to the port of discharge,

even after "signing off" the shipping articles, and after they are formally and legally discharged, there is still some kind of continuing relationship between them and the Steamship Company which prevents the occurrence of a vacancy in the crews of these ships. This position is taken by Mr. Justice Black even though the Waterman Steamship Corporation, upon the termination of the shipping articles, has no further claim on the services of these seamen, and notwithstanding the fact that the Waterman Steamship Corporation, under our existing laws, can not even permit these seamen to work for it again until they have signed a new written contract in the shape of shipping articles.

The opinion of the Court in this case, delivered by Mr. Justice Black, shows that the Court had very carefully reviewed the evidence in this case, and reached the conclusion that this evidence is sufficient to support the findings of fact made by the National Labor Relations Board, and that, therefore, these findings of fact are conclusive under the provisions of the applicable statute. Inasmuch as the Court has carefully reviewed this evidence we will not here raise any question as to the sufficiency of the evidence to support the findings of fact made by the Board.

However, even though every finding of fact made by the Board is conclusive and binding, there yet remains one material conclusion of law made by the Board which cannot legally be reached upon the basis of any finding of fact made by the Board. In the language of the opinion of this Court in this case, "Congress has left questions of law which arise before the Board . . . ultimately to the traditional review of the judiciary." Therefore, if this conclusion of law made by the Board was erroneous, there is no statutory restriction to fetter the Court and prevent it from correcting such error.

The conclusion of law to which we refer is the conclusion that the general practice or custom as to con-

tinuity of employment, which the Board found to exist, had the effect of changing or varying the terms of the written contract of employment between the parties in this case, or had the effect of creating a contract of continuing employment. It has been repeatedly and consistently held by this Court that no written contract can be controlled or varied by usage or custom, nor can any usage or custom engraft upon a written contract terms and provisions in addition to, and inconsistent with, those expressed therein. On the contrary, it is the contract which controls the usage or custom. This proposition of law has been stated by this Court as follows:

> "An express contract of the parties is always admissible to supersede or vary or control a usage or custom; for the latter may always be waived at the will of the parties. But a written and express contract cannot be controlled or varied or contradicted by a usage or custom, for that would not only be to admit parol evidence to control, vary or contradict written contracts, but it would be to allow mere presumptions and implications, properly arising in the absence of any positive expressions of intention to control, vary or contradict the most formal and deliberate written declarations of the parties . . . No usage can be incorporated into a contract which is inconsistent with the terms of the contract."
>
> Orient Mut. Ins. Co. v. Wright, 68 U. S. (1 Wall.) 456, 17 L. ed. 505, 509.
>
> "Where the intent and meaning of the parties are clear, evidence of a usage to the contrary is irrelevant and unavailing.
>
> "Usage cannot make a contract where there is none, nor prevent the effect of the settled rules of law."

First National Bank v. Burkhardt, 100 U. S. (10 Otto) 686, 25 L. ed. 766.

The conclusion of the Board that there was a continuing employment relationship in this case, beyond the term specified by the written shipping articles, is not based upon any finding of fact that the parties themselves had made any contract, express or implied, for such continuing employment. However, the opinion of the Court in this case, delivered by Mr. Justice Black, indicates that the Court erroneously assumed that there was such finding of fact.

The opinion of the Court in this case further indicates that if the Court had not reached the conclusion that there was a continuing term of employment beyond that specified in the shipping articles, the decision of the Court would have been different with respect to the alleged discriminatory discharges. Under these circumstances, we believe it is in order to bring this matter to the Court's attention and to request a reconsideration of this phase of the case.

In order to demonstrate clearly the point which we are making, we will analyze as briefly as possible the relevant portions of the opinion of the Court in this case and the relevant portions of the findings of the Board, and refer briefly to the authorities of law upon which we rely.

The opinion of the Court in this case, delivered by Mr. Justice Black, made the following statement with respect to this point:

> "This statutory plan (providing for shipping articles)[1] was never intended to forbid the parties from **mutually undertaking to assure a crew** the right to continue as employees and to re-sign if it

[1] Words in parenthesis supplied by us.

> desires after signing off articles at a voyage's end . . . If, therefore, there was substantial support in the evidence for **the findings that these crews had a continuing right** to and customary tenure, term or condition of employment within the purview of the Act . . .the court below was required to enforce the Board's order."

There is necessarily an implication in this language that there was some finding of **fact** by the Board either (1) that there was a separate contract, express or implied, in addition to the shipping articles, which provided for a continuing term of employment, or (2) that there was some finding of fact which could lead to the conclusion of law that there was a continuing contractual employment relationship. Indeed, the entire opinion in this case indicates that it was assumed by the Court that there was such a finding of **fact** by the Board, and that the Court concerned itself chiefly with reviewing the evidence to determine whether or not such finding of fact was supported by sufficient evidence. A careful review of the findings of fact made by the National Labor Relations Board discloses that there was no such finding of fact.

All of the findings of the National Labor Relations Board with regard to continuity of employment are shown on page 109, and pages 111-112, of the Record. Upon analysis of the findings by the Board on this point it appears that these findings may be fully summarized by the following quotation of the words used by the Board:

> "The respondent asserts that the whole contract between itself and its crews is embodied in the shipping articles under which the crews sail and that the crews are completely discharged and the employer-employee relationship terminated at the end of each particular voyage."

(1) "This assertion is inconsistent with the terms of the respondent's contract with the I. S. U., Article II, Section 1 . . .

(2) "The respondent's assertion is also inconsistent with actual maritime practice as disclosed in the testimony of numerous witnesses . . . that the mere expiration of the shipping articles does not terminate the seamen's employment." (R. 109)."[1]

It is obvious that the only finding of fact included in the foregoing quotation from the Board's decision is the fact, which the Board found, that there is an actual maritime practice or custom by which the employment of seamen is continuous. The other statements made by the Board are purely conclusions of law.

It will be noticed that there is no finding of fact by the Board that there was any separate contract, either oral or written, which provided for any term of employment longer than that provided in the shipping articles. The Board rests its conclusion of law solely upon the general practice or custom which it found to exist, and attempts to lend some added weight to its conclusion by referring to certain provisions of the respondent's contract with the I. S. U. The reference to the provisions of the I. S. U. contract will be hereafter discussed. The most important question to be considered here is whether or not the finding of the Board as to the existence of a general custom or practice can have the effect of leading to the legal conclusion, under the facts of this case (as found by the Board itself), that an employment relationship existed even after the expiration of the term provided in the shipping articles.

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[1] We have inserted the numbers for convenience in reference.

We are convinced that such a custom or practice could not, as a matter of law, vary the terms of the written contract which was entered into between the Waterman Steamship Corporation and the seamen, and we will discuss below the authorities in support of this proposition.

The opinion of the Court in this case, delivered by Mr. Justice Black, makes the following statement in connection with the Board's finding that there was continuity of employment: "That there may be a tenure or term of employment determinable at will is a recognized principle of law. For the purpose of the Act, it is immaterial that employment is at will and terminable at any time by either party." In support of the statement as to employment terminable at will there are cited decisions of Alabama courts. We do not question the correctness of this general proposition, but we do insist that the principle has no application to this case. In order to make clear the point of distinction, we will here quote the pertinent parts from each of the Alabama decisions cited.

> "Undoubtedly a contract of employment which is in a true sense indefinite and without stipulation for an implied minimum period, is at the will of either party."
>
> Alabama Mills v. Smith, 237 Ala. 296, 186 So. 699.

> "The presumption which, as already stated, is entertained by most of the American Courts, that an indefinite hiring is a hiring at will . . .
>
> "Turning to our own cases, the rule is fully recognized that an indefinite employment is terminable at the will of either party. Howard v.

East Tenn., Va. & Ga. R. R. Co., 91 Ala. 268, 8 So. 868."

Peacock v. Virginia-Carolina Chemical Co., 221 Ala. 680, 130 So. 411.

"The contract declared on was for no specific time and was determinable by either party at will, at the end of any week."

Great Atlantic & Pacific Tea Co. v. Summers, 25 Ala. App. 404, 148 So. 332; cert. den. 226 Ala. 635, 148 So. 333.

The above quotations show that the courts in those cases had reference to a hiring which was in a true sense indefinite and made no stipulation for a specific period of time. That situation is entirely different from the situation in this case where there is a written contract of employment providing for a definite and specific term of employment to terminate at the end of the voyage. The term of employment provided for in the shipping articles in question was for one voyage only, as pointed out in our original brief on pages 19 and 25. Furthermore, as pointed out in our original brief, the statute itself required the shipping articles to state "the duration of the intended voyage or engagement." Title 46, United State Code, Sec. 564. We do not believe there can be any doubt that these provisions in the articles have the effect (insofar as the articles themselves are concerned) of definitely fixing the term of employment. While we are unable to find that the Supreme Court of the United States has ever considered the effect of this provision of shipping articles prior to the consideration of the case at bar, we do find that the lower courts have, over a number of years, construed the shipping articles as expressly providing for a very definite term of employment. This construction has been recognized by the United States

Circuit Court of Appeals for the Fourth Circuit, in language as follows:

> "The voyage for which they had shipped was completed when the cargo was discharged at Bangor. U. S. v. Barker, Fed. Cas. No. 14,517(1); The Edwin (D.C.) 23 F. 255, 256; The Larimer (D.C.) 174 F. 429, 430. This being the 'final port of discharge,' they were under no obligation to proceed further with the vessel, **nor was she under obligation to employ them further.**"
>
> The Velma L. Hamlin, (4th C.C.A.-1930) 40 F. (2d) 852.

Although the cited decision of the United States Circuit Court of Appeals for the Fourth Circuit cannot, of course, be binding upon this Court, nevertheless additional weight is given to this decision by the principle of law that judicial construction of a statute in force at the time the contract is entered into becomes a part of the contract. If the judicial construction is changed subsequent to the time that the contract is made, it has been held that this does not have the effect of changing the interpretation of the existing contract. Authorities for these propositions are as follows:

> "The doctrine of this court here to be applied has long been established.
>
> "In Von Hoffman v. Quincy, 4 Wall. 535, 550, 552, 553, 18 L. ed. 403, 408, 409, through Mr. Justice Swayne, we said:
>
> " 'It is also settled that the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms. This principle

(1) Note: This apparently should be 14,516.

embraces alike those which affect its validity, construction, discharge, and enforcement'."

Hendrickson v. Apperson, 245 U. S. 105, 62 L. ed. 178, 184.

See, also,

Farmers & M. Bank v. Fed. Res. Bank, 262 U. S. 649, 67 L. ed. 1157.

Connecticut Mut. L. Ins. Co. v. Cushman, 108 U. S. 51, 27 L. ed. 648.

"The true rule is to give a change of judicial construction, in respect to a statute, the same effect in its operation on contracts and existing contract rights that would be given to a legislative amendment; that is to say, make it prospective, but not retroactive. After a statute has been settled by judicial construction, the construction becomes, so far as contract rights acquired under it are concerned, as much a part of the statute as the text itself, and a change of decision is, to all intents and purposes, the same in its effect on contracts as an amendment of the law by means of a legislative enactment."

Douglass v. Pike County, 101 U. S. (11 Otto) 677, 25 L. ed. 968, 971.

See, also,

Anderson v. Santa Anna Twp., 116 U. S. 356, 29 L. ed. 633, 635.

We believe it is absolutely clear from the shipping articles themselves, the relevant statutes, and the foregoing decisions, that the effect of the provision in the shipping articles for one voyage only is to provide, in-

sofar as the shipping articles themselves can provide, for a definite period of employment which will terminate at the end of the voyage, and after which time there is no further obligation on the part of either party. The only question which here arises is whether or not a general custom or practice can have the effect of superseding or adding to the express provisions of this written contract. The Board has not made any finding of fact that there was some other contract existing between the Waterman Steamship Corporation and these crews providing for any different term of employment. Therefore, the only way in which the Board could have arrived at the conclusion that there was a term of employment in addition to that prescribed by the written contract would have been to hold that the general custom or practice had the effect either of adding such provision to the written contract, or of making a contract between the employer and employee where none otherwise existed. It is clear that such a holding would be absolutely erroneous under well established principles of law.

With special regard to the shipping articles it has been held consistently that the terms of these articles cannot be varied by parol evidence. We quote below excerpts from decisions stating this principle.

> "... the shipping articles cannot thus be varied by parol. It is the intention of the statute that the articles shall express the true nature of the voyage, and it is contrary to its policy to permit a variation of the articles by evidence of a verbal agreement made at the time when they were signed. Thompson et al v. The Oakland, Fed. Cas. No. 13,971; The Triton, 1 Blatchf. & H. 282, Fed. Cas. No. 14,181."
>
> Northwestern S. S. Co. v. Turtle (9th C. C. A.-1908), 162 F. 256, 258; aff. 154 F. 146.

". . . . and it is believed that no case can be produced in which a seaman has been permitted to disregard the written contract, unless he has satisfied the court it was executed through fraud or imposition practised upon him."

The Triton (D. C.-N. Y.-1832), Fed. Cas. No. 14,181.

With regard to contracts generally, this rule is also well established. A decision of the Alabama Supreme Court illustrates the point:

"The parties have thus expressed in writing the conditions by which they are to be bound; and it is not in the power of the courts to imply the existence of others. The rule is of very general, if not universal application, that where parties have entered into written engagements, with express stipulations, these cannot be extended by implication. The presumption is, that, having expressed some, they have expressed all the conditions by which they intend to be bound."

Blackman v. Dowling, 63 Ala. 304.

Furthermore, the principle is well established, and has been recognized by this Court many times, that no written contract can be controlled or varied by usage or custom, nor can any usage or custom engraft upon a written contract terms and provisions in addition to, and inconsistent with, those expressed therein. It is, rather, the contract which controls the usage or custom. We have already quoted excerpts from two decisions of this Court clearly establishing this proposition. Orient Mut. Ins. Co. v. Wright, 68 U. S. (1 Wall.) 456, 17 L. ed. 505, 509; First National Bank v. Burkhardt, 100 U. S. (10 Otto) 686, 25 L. ed. 766, cited and quoted supra, pages 8-9.

From the foregoing authorities it is clear that under established and well recognized principles of law the mere existence of a general custom or usage that seamen are generally given the right to sign on again after the termination of a voyage—and this is the only relevant finding of **fact** by the Board (R. 109)—cannot vary the term of employment expressed in the shipping articles, which is the written contract of employment and the only one entered into between the Company and the seamen; nor can such custom have the effect of creating a term of employment which does not otherwise exist.

As previously pointed out hereinabove, the only other basis stated by the Board for its conclusion of law that there is a continuous term of employment existing independently of the shipping articles, and in addition to the term therein prescribed, is the statement that the provisions of the respondent's general contract with the I. S. U. are inconsistent with the idea that the employment terminates at the end of the voyage. This statement by the Board is nothing more nor less than the interpretation of the legal effect of provisions of a written contract. "The construction of all written instruments belongs to the court alone." 13 C. J., Contracts, s. 1031. Since the statement of the Board is a **conclusion of law** rather than a **finding of fact**, it is not conclusive or binding upon the Court, but is subject to review by the Court, and "apparently conflicting provisions must be reconciled if possible by any reasonable interpretation". 13 C. J., Contracts, s. 497.

The provision of the contract referred to by the Board (R. 109) is that provision to the effect that "this section shall not be construed to require the discharge of any employee who may not desire to join the Union." It is certainly reasonable to assume that the purpose of inserting this provision in the union contract was to prevent the shipping companies from being

liable for breach of this contract by retaining any employee during the definite period of employment for which he had signed. There would probably be little reason for such a provision if the only type of employment under shipping articles were employment for one voyage only. But there are many shipping companies which make a practice of signing the seamen on for a definite period of time, such as one year, as allowed by statute (46 U. S. Code, section 572; Respondent's Original Brief, page 19), rather than for only one voyage. This is especially true with companies engaged in coastwise shipping, many of whom were parties to this contract as indicated by the printed contract (especially Article VII, section 2, thereof) which is in evidence as Respondent's Exhibit No. 14, and by testimony which is uncontradicted. (R. 283).

Certainly nothing can be found in this provision, referred to by the Board, to **prohibit** the company and the seamen in connection with any specific voyage from entering into an express written contract making definite provision for the term of employment. There is no finding or contention that there was any discrimination in the making of the contract embraced in the articles.

The provision above discussed is the only provision of the union contract which is referred to in the decision of the Board as being inconsistent with the idea of a limited and definite term of employment (R. 109). However, in the opinion of the Court, delivered by Mr. Justice Black, reference is also made to that part of the I. S. U. contract governing hours of work in home port. As stated in the preceding paragraphs, this contract was drafted to cover many different shipping companies, some of whom made a practice of signing the seamen on articles for a definite period of time rather than for a specific voyage. Of course, in such cases the employment is continuous during the period of time

provided in the shipping articles, and the seamen continue to work in the home port. Furthermore, there is a field of operation for this provision even in those instances in which the seamen have signed for one voyage only. It has never been disputed by the respondent throughout these proceedings that even in cases where the seamen are employed for one voyage only some of the same seamen may sometimes be rehired upon an entirely new contract of employment, for work in the home port.

Moreover, it should be borne in mind that these provisions in question are contained in a contract which is merely one of a general nature between the company and the union. The specific contract of employment **with the employees themselves** is the shipping articles. "If one clause is at variance with another, the one contributing most essentially to the contract will be entitled to more consideration than that which contributes less". 13 C. J., Contracts, s. 497.

We believe it is clear, therefore, that there is nothing in this contract between the respondent and the I. S. U. which is really inconsistent with the fact that in certain specific instances the seamen are signed on shipping articles for one voyage only, and that the term of employment ends upon the termination of the voyage. There is certainly nothing in either of these provisions of the contract with the I. S. U. which, standing alone, is strong enough to be construed as changing the express provisions of the shipping articles limiting the term of employment to one voyage only.

In Mr. Justice Black's opinion he likens the situation here presented to the case of factory workers who are, of course, customarily employed at will, without any obligation of employer or employed to continue the relationship when the day's work is done. There is no similarity in the relationship between factory workers

and their employers and seamen and their employers. As to termination of shipping articles being a termination of the employment, see Report of the then United States Maritime Commissioner, Hon. Joseph P. Kennedy, quoted on page 27 of our original brief. Also, see the testimony of United States Shipping Commissioner, Captain R. G. Dobbin, found on pages 428 and 429 of the Record. For example, a factory worker returns to work on the following day and continues his work in the same manner that he had worked on the preceding day, but in the case of a seaman he is not even permitted to begin work for the steamship company on the following voyage until he has first signed a new written contract in the shape of shipping articles.

We are at a loss to understand how it could be held that where such a situation as above mentioned exists, it can be said that no vacancy has occurred. We can not conceive of a more clear-cut or well defined case of a vacancy than that which exists when a man signs a written contract to do a certain piece of work and finishes that work and is paid off, especially where under the existing laws this man can not even be permitted to do any further work of like kind until he has first entered into a new, formal, written contract with his previous employer for such further work.

Of course, if there is a vacancy at the end of the voyage, as we contend is the case under the facts presented by the Record, then as a matter of law there was no discharge of these crew members, but merely a failure to re-employ them.

In our original brief, and upon oral argument, we strongly urged that there was absolutely no evidence to support the conclusion of the Board that Waterman Steamship Corporation had any animosity toward the C. I. O., and pointed out that the record shows just the

opposite, and discloses that the Waterman Company regularly employed certain classes of its employees who belonged to unions affiliated with the C. I. O. We still feel strongly that our contention in this respect was correct, but inasmuch as the opinion of the Court indicates that this point was considered by the Court, we will not here attempt to re-open this particular phase of the case. We do wish to point out, however, that the opinion of the Court indicates that there was a misconception by the Court of the exact situation which existed with respect to the hiring of seamen for the voyages of the "Bienville" and the "Fairland," respectively, following the lay-ups.

Mr. Justice Black, in his opinion in this case, says:

> "The sole question remaining is whether the evidence supported the findings of the Board that the employment or tenure of the crews and of O'Connor and Pelletier were terminated **because they had joined or engaged in the activities of the C. I. O.**"

The point which we especially wish to stress to the Court is that the Waterman Steamship Corporation did not refuse to give these seamen further employment because of their C. I. O. activities, but simply refused to give them further employment because these seamen did **not** belong to the union whose members were entitled to preference of employment under a solemn and valid contract entered into by the Waterman Steamship Corporation with the American Federation of Labor affiliate known as the I. S. U.

Briefly stated, the position of the Waterman Steamship Corporation is that it could not have re-employed these seamen for a further voyage without violating its preferential employment contract with the A. F. of L. affiliate known as the I.S.U. To illustrate this point

a little further, and to make the position of the Waterman Steamship Corporation a little clearer on the proposition that its failure to re-employ these seamen was in no manner due to these seamen having joined or engaged in the activities of the C.I.O., it will only be necessary for us to call the Court's attention to the fact that exactly the same thing would have happened if not one of these seamen had ever joined the C.I.O., or engaged in any of the activities of the C.I.O. In other words, if each of these seamen had turned in his union book to the I.S.U. and resigned from that union, so that he was no longer a member of that organization, and therefore not entitled to preference of employment, he would not have been re-employed by the Waterman Steamship Corporation even if he had not joined the C.I.O. How then could it be said that the failure of the Waterman Company to re-employ them was due to the fact that they had joined or engaged in the activities of the C.I.O.? In such case none of these seamen would have had any connection with the C.I.O. To state the proposition just a little differently, the activities of these seamen in joining the C.I.O. had absolutely nothing to do with their inability to get employment from the Waterman Steamship Corporation. They could have joined the C.I.O., or any other union except the I.S.U., or they could have refrained from all union affiliation and merely resigned from the I.S.U., and still they could not have been employed by the Waterman Steamship Corporation unless and until they joined the I.S.U. and were eligible for employment under the preferential contract which the Waterman Company had with the I.S.U.

On this petition for a rehearing we are not going to request this Court to reconsider the position which it took, as set out in the opinion of Mr. Justice Black, relative to the weight which the Courts should give to the findings of fact by the National Labor Relations Board,

but we do hope to get this Court to hold with us on the proposition that by upholding the contract which the Waterman Steamship Corporation had with the I.S.U. and which it tried to comply with, and thought it had complied with, this Court will not be disturbing the findings of fact made by the Labor Board, but only deciding a question of law.

It is apparent from the Record that a very grave injustice will be suffered by the Waterman Steamship Corporation, if it is compelled to pay the wages for nearly three years of two full crews for each of the two vessels in question when in truth and in fact only one crew for each ship has rendered it any service. The Labor Board has ordered the Waterman Company to pay its former crews full time on the theory that the Waterman Company had discharged them, rather than the crews being discharged as a matter of law by the operation of the shipping articles. We feel that this Court should grant our petition for a rehearing, because, as a matter of law, the employment of these seamen was terminated when they "signed off" shipping articles and a vacancy existed which had to be filled from the membership of the I.S.U.,—that is, if the Waterman Steamship Corporation was to comply with the terms of a contract which it had entered into in the utmost good faith with a labor union known as the I.S.U.

In our former brief and in our oral argument we laid little stress on the proposition that the "Bienville" was ordered to proceed from Tampa to Pensacola, and then to Mobile, without stopping at Panama City, which is to the East of Mobile, or without going over to Gulfport, which is to the West of Mobile, because the National Labor Relations Board, in its findings of fact, had found that the change of the crew of the S. S. "Bienville" from the I.S.U. to the N.M.U. took place on July 2nd, 1937 (R. 108) whereas the undisputed

evidence showed that the orders relative to the change of schedule were issued on July 1st, 1937, prior to the time that the S. S. "Bienville" had even reached Tampa, Florida. See Respondent's Exhibit No. 25. However, in view of the fact that Mr. Justice Black, in his opinion, seems to lay much stress on the cancelling of the stop at Panama City,—the boat would necessarily first come to Mobile before going on westward to Gulfport,—we wish to call the Court's attention to the fact that there were only 29 tons of cargo scheduled for Panama Ciy and 38 tons for Gulfport, out of a total inward cargo of 2,668 tons. (See Respondent's Exhibit No. 25.) It would be a great deal cheaper for the Waterman Steamship Corporation to bring the "Bienville" into Pensacola or Mobile and re-ship this 29 tons of cargo to Panama City on one of its numerous other vessels touching at these several Gulf ports, rather than to stand the expense of taking a big ocean-going steamer into the harbor of Panama City with the attendant expense incident to the loss of time, pilotage fees, wharfage fees and dockage charges, merely for the purpose of unloading the trifling amount of 29 tons of cargo. So far as the 38 tons of cargo for Gulfport are concerned, that small amount of cargo could also be handled much more economically by a reshipment from Mobile, if the freight was of such character that damage would be done by delaying its delivery until the "Bienville" left Mobile and touched at Gulfport on its next voyage after the making of the necessary repairs. We only refer here briefly to this situation because of the suggestion in Mr. Justice Black's opinion that the stop at Panama City was cancelled for the purpose of speedily discharging the crew. So far as Gulfport is concerned, of course, the "Bienville" would not have gone to Gulfport anyway until after she first came to Mobile, as Gulfport is West of Mobile, while, as above stated, Panama City is East of Mobile. Of course, there was no cancellation of any stops so far as the S. S. "Fairland" was concerned.

The Board found as a fact that the Waterman Steamship Corporation discriminated against the seamen in question, because of a dislike of the Waterman Company for the N. M. U., and the Court, in its decision, concluded that there was sufficient evidence to support this finding by the Board. However, neither the Board, nor the Court in its decision, discussed the situation that the evidence shows without dispute that in arriving at the decision that it could not re-employ the seamen in question without violating the terms of its contract with the I. S. U., the Waterman Steamship Corporation acted upon advice of its General Counsel (R. pp. 312 and 506).

It is generally recognized by the Courts that where a party is confronted with a situation where a decision involving legal questions must be made, and he consults counsel and acts on the advice of counsel in the premises, this establishes good faith. See, as examples, the following cases:

> "These cases, and many others that might be cited, show that if the defendants in such a case as this (malicious prosecution) acted bona fide upon legal advice, their defense is perfect."
>
> Stewart v. Sonneborn, 98 U.S. (8 Otto) 187, 25 L. ed. 116, 120.

> "When the advice is sought and obtained from a person learned in the law, and acted upon under the circumstances stated in the rule, it furnishes a complete defense to the whole action. It constitutes a valid defense to the action for malicious prosecution."
>
> Dent v. De Arman, 100 So. 122, 123, 211 Ala. 189.

Although the reference in the above cited cases is to an action for malicious prosecution, yet the general principle is applicable here, by analogy.

It is our earnest insistence that under the statutes which we quoted in our original brief, and the authorities referred to in this brief, the law is clear that where the shipping articles provide for one voyage only, the employment relationship between the Company and the seamen is at an end upon the termination of the voyage. It is our contention, therefore, that upon the termination of the respective voyages of the "Bienville" and the "Fairland" in this case, and the signing off of the shipping articles, there were created vacancies within the meaning of the contract which the Waterman Steamship Corporation had with the I. S. U., and the Waterman Company, when it was ready to enter into a new contract and have new shipping articles signed, was compelled under the terms of its contract with the I. S. U. to give preference of employment to members of that union.

However, if this Court should finally determine that our contention as to this proposition of law is incorrect, nevertheless the fact remains that the Company in good faith consulted its General Counsel in regard to the proper construction of the shipping articles and the contract in question, and was advised that vacancies within the meaning of the I. S. U. contract had occurred upon the termination of the shipping articles, and that Waterman Steamship Corporation was legally bound to give preference of employment to members of I. S. U. This interpretation given to the Waterman Steamship Corporation by its General Counsel was founded upon the uniform construction which had theretofore been placed upon the form of shipping articles in question by all courts having the matter under consideration. In fact, nowhere in the law books have we been able to find any case, prior to the rendering

of the opinion of Mr. Justice Black in this case, which intimated, hinted, or suggested in the slightest degree that the contract between the steamship company and its seamen was not terminated upon the expiration of the voyage and the signing off of the shipping articles.

WHEREFORE, the Waterman Steamship Corporation respectfully submits to the Court that its petition for a rehearing should be granted; that if consistent with the Rules of this Honorable Court its counsel be permitted to argue the case upon rehearing orally; and that upon such rehearing the judgment of the United States Circuit Court of Appeals for the Fifth Circuit be affirmed.

Respectfully submitted,

Gessner T. McCorvey,

Mobile, Alabama,

Attorney for Waterman Steamship Corporation.

C. A. L. Johnstone, Jr.,
Mobile, Alabama.

McCorvey, McLeod, Turner & Rogers,
Mobile, Alabama,

Of Counsel.

I, Gessner T. McCorvey, do hereby certify that on this the 5th day of March, 1940, I mailed copies of the foregoing petition for a rehearing and brief and argument in support thereof, postage prepaid, to Robert H. Jackson, Esq., former Solicitor General of the United States, Washington, D. C., to Francis Biddle, Esq., Solicitor General of the United States, Washington, D. C.; to Charles Fahy, Esq., General Counsel of the National Labor Relations Board, Washington, D. C.; and to Robert B. Watts, Esq., Associate General Counsel of National Labor Relations Board, Washington, D. C., counsel for petitioner.

Executed this 5th day of March, 1940.

(Gessner T. McCorvey).

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1939

No. 193

NATIONAL LABOR RELATIONS BOARD
Petitioner

vs.

WATERMAN STEAMSHIP CORPORATION
Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF AMERICAN FEDERATION OF LABOR, AMICUS CURIAE, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CHARLTON OGBURN,
Counsel for American Federation of Labor, Amicus Curiae.

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The American Federation of Labor, an unincorporated association, represents to this Honorable Court that the intervenor, The International Seamen's Union, before the National Labor Relations Board, was chartered by and was affiliated with the American Federation of Labor, having exclusive jurisdiction of all seamen constituting the unlicensed personnel of the American merchant marine. Therefore, the American Federation of Labor, the parent organization, which is vitally interested in the legal questions involved in this case, respectfully asks permission of this Honorable Court to file this brief as *amicus curiae*

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in opposition to the petition for writ of certiorari, petitioned for by the National Labor Relations Board to be issued to the United States Circuit Court of Appeals for the Fifth Circuit to review the judgment of that Court entered on April 11, 1939.

The Circuit Court of Appeals, in its decision and in an opinion written by Mr. Justice McCord, granted the petition of the Waterman Steamship Corporation to vacate the order of the National Labor Relations Board (except as to one employee).

Because the American Federation of Labor believes that the decision and judgment of the Circuit Court of Appeals vacating this order of the National Labor Relations Board are fully supported by the facts as shown in the Record, and because the American Federation of Labor believes that the decision and order of the National Labor Relations Board were not based on the substantial evidence required by the law to support such an order, and because the Circuit Court of Appeals, in its decision and judgment, gave effect to a contract between the International Seamen's Union, chartered by and affiliated with the American Federation of Labor, and the Waterman Steamship Corporation, and because the American Federation of Labor believes that the validity of the contract between employers and unions should be upheld by the courts, the American Federation of Labor is impelled to ask leave to file this brief in opposition to the petition for a writ of certiorari and in support of the position taken by the respondent, the Waterman Steamship Corporation, in its brief and argument in opposition to the petition for writ of certiorari.

Furthermore, there is nothing in the petition praying for the writ of certiorari now presented to this Court which brings this case within the classes named in Rule 38 of this Court under which a petition for a writ of certiorari will be granted nor does petitioner show any special or important reasons why this Court should undertake a study of this voluminous Record in order to review the decision of

the Circuit Court of Appeals, which, to the American Federation of Labor, was required by the law and by the record. The American Federation of Labor filed a brief with the Circuit Court of Appeals and its position in that brief was supported fully by the decision of the Circuit Court of Appeals.

STATEMENT OF FACTS

The proceedings before the National Labor Relations Board in this case are adequately set out in the brief and argument in opposition to the petition for writ of certiorari by the Waterman Steamship Corporation, the respondent.

The International Seamen's Union of America (hereinafter sometimes called the "I. S. U.") was organized in 1892, received a charter from and affiliated with the American Federation of Labor, having exclusive jurisdiction over the unlicensed persons employed on board ships, including bona-fide seamen, deck engineers and stewards departments. On January 1, 1935, the I. S. U., as the representative of its membership, entered into a written agreement with approximately ninety Atlantic and Gulf steamship companies, including the Waterman Steamship Corporation, and that agreement was amended in 1936. The contract was in force and effect between the parties thereto on the date of the alleged discharge of the seamen named in the amended complaint and on the date of the amended complaint issued by the Board against the respondent. Because of the existence of the aforesaid agreement and of the necessity of protecting the said agreement in the hearings before the N. L. R. B., the I. S. U. (then directed by a reorganization committee), moved to intervene in the proceedings at the hearing on the amended complaint held before the Examiner of the Board and the motion to intervene was granted.

The agreement between the petitioner and the I. S. U. specifically provides as follows:

"Section 1. It is understood and agreed that, as vacancies occur, members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the respective positions; provided, however, that this Section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt reshipment, or absence due to illness or accident."

Mr. Justice McCord's opinion is a very clear and a very accurate summary of the testimony on which the Board based its order, and clearly shows there was no substantial evidence to support this order of the Board holding that the respondent had violated the National Labor Relations Act. Particularly the Record supports the definite statement of Mr. Justice McCord that:

"The evidence is virtually without dispute that repairs on the S. S. Bienville and S. S. Fairland had been planned by the company long before the crews changed their membership from one union to another. When the ships were laid up for repairs it was only for reasons of economy, we think, that the crews were discharged. There was no effort on the part of the company to make war on the unions. The evidence does not even point in that direction. . . . The finding of the Board that the ships were laid up as an excuse to get rid of the men is based on suspicion and not on the evidence.

"When the time came to employ crews for the Bienville and Fairland after they had been repaired, the company was bound under its contract to select its unlicensed employees from the membership of the International Seamen's Union of America. The Board by its order would penalize the company for keeping this contract."

ARGUMENT

The clause relied upon in the contract between the ship owners and the International Seamen's Union was a concession by the steamship lines to this union and was a notable victory for the members of the union. This contract was executed prior to the enactment of the National Labor Relations Act. There is nothing, however, in the provisions of the National Labor Relations Act which would invalidate or modify this agreement. There is no question but that this contract was valid, binding and in force at the time of the discharge of the employees and thereafter and at the time of the issuance of the amended complaint. A similar contract embodying the identical language of the foregoing quoted clause was upheld as binding and valid by this Court in its decision in the case of *The Peninsular & Occidental Steamship Company* v. *N. L. R. B.*, (Fifth C. C. A.) 98 Fed. (2d) 411.

We particularly approve the decision and the language of the opinion of that Honorable Court in the P. & O. SS. decision as follows:

> "The contract with the International Seamen's Union was a valid, existing agreement at the time the crews were discharged and no other bargaining unit had been designated. Under its terms the company was obliged to give its members preference in reemployment."

The crews of these two ships, by deserting the International Seamen's Union, accordingly lost the benefits of the contract between the union and the steamship company. Under that contract the company was obligated to give preferential treatment to members of the International Seamen's Union.

Employment on American steamships is different in one very important feature from employment in other industries in that seamen's employment is regulated by shipping articles and their employment ends when the shipping articles are terminated. Shipping articles are in the nature

of an individual contract which a seaman, who is deprived of the benefits of a collective agreement, has to rely upon. For years the American Federation of Labor has diligently endeavored to have enacted Federal legislation which would make sailors free men and give them the right to leave the employment of a vessel at stated times, as is now accomplished by shipping articles. The employment of the members of these crews was terminated by the expiration of the shipping articles; and the steamship Bienville having been laid up in Mobile for repairs and the steamship Fairland, on reaching Mobile, having been put on dry dock according to plans made by the company long before the crews changed their union membership, the respondent, when it was ready to put these two steamers in service again, was compelled to observe its contractual obligations with the International Seamen's Union to give preference in employment of members of that union. This contract the Circuit Court of Appeals upheld as valid and cited in support of its opinion on the validity of the contract its own decision in the case of The Peninsular & Occidental Steamship Company vs. the National Labor Relations Board, 98 F. (2d) 411,—a case in which certiorari was denied by this Court, 305 U. S. 653, 83 L. ed. 224. Furthermore, the International Seamen's Union put the Waterman Steamship Corporation on notice that if it violated this contract it would be held in damages (page 506, Record).

No evidence was introduced at the earing before the Trial Examiner in the Waterman Steamship case tending to impugn the validity of this contract and the Board in its decision made no ruling on the validity of that contract, and there is nothing in the decision or the order of the Board suggesting that any contention is made that this contract was not entirely valid and in full force and effect.

The sole question therefore was whether vacancies had occurred, in filling which the company under the contract was required to give preference of employment to the I. S. U.

The company admits that vacancies occurred and contends that these vacacies were created by the necessary layoff and the termination of employment under the shipping articles between each member of the crew and the master of the ship. If the expiration of the shipping articles terminated the employment, there is no question but that vacancies existed.

Therefore, if the expiration of its shipping articles did in fact terminate the employment, as seems to us to be clearly the case, the relation of employer and employee had ceased to exist (even if ordinarily quickly resumed), and if there were at the time an existing valid contract between the International Seamen's Union and the shipping company, then the company had no alternative but to give preference in the reemployment of crews for these ships to members of the International Seamen's Union.

The two salient points in this case are the provisions in the contract between the company and the I. S. U., under which preference was to be given to members of the I. S. U. in filling the crews of the unlicensed personnel, and the shipping articles, under which contracts of employment are terminated upon their expiration and the reciprocal rights and obligations of both the shipping company and the seamen under these articles.

The filling of these vacancies by the Waterman Steamship Corporation in fulfillment of its contract with the I. S. U., a valid contract, and at the demand of the I. S. U., was not discriminating in its employment policy or in any sense a violation of the National Labor Relations Act. The Board's decision, in our opinion, holding the contrary, is not supported by substantial evidence—in fact, is not supported by any evidence at all—in view of the legal construction necessarily placed on shipping articles. Therefore the reasoning in the remainder of the Board's decision becomes mere rationalization.

With regard to that portion of the decision of the Circuit Court of Appeals dealing with the finding by the Board

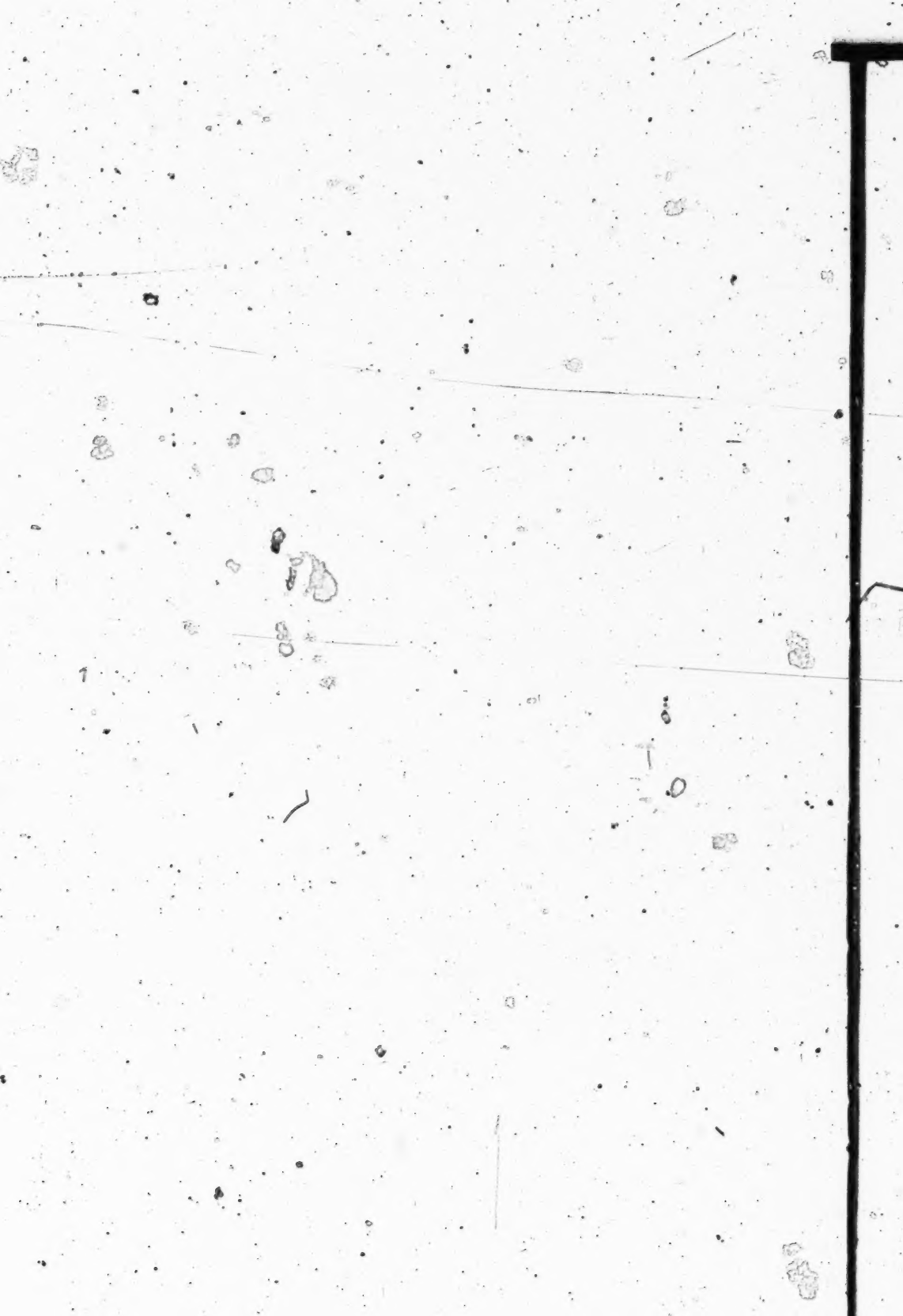
against the respondent for refusal to issue passes to representatives of the National Maritime Union, affiliated with the C. I. O., to come aboard its vessels to proselyte and organize its employees, the opinion of Mr. Justice McCord is not subject to attack or criticism. The soundness of his views and those of the Circuit Court are ably set forth in the brief filed with this Court by attorneys for the respondent, pages 22-24; and the American Federation of Labor specifically supports this argument, which shows definitely that there was no discrimination by the respondent's refusal to issue passes and hence no violation of the National Labor Relations Act.

CONCLUSION

The American Federation of Labor is of the opinion that the Circuit Court of Appeals for the Fifth Circuit committed no error in its decision which was in all respects proper, and that the petition for a writ of certiorari filed in this Court does not state a case in which a petition for a writ of certiorari will be granted, and that the petition for the writ of certiorari should be denied.

Respectfully submitted,

CHARLTON OGBURN,
Counsel for American Federation of Labor,
Amicus Curiae.



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Supreme Court of the United States

OCTOBER TERM, 1939.

No. 193. ORIGINAL.

NATIONAL LABOR RELATIONS BOARD, *et al.*,
Petitioner,

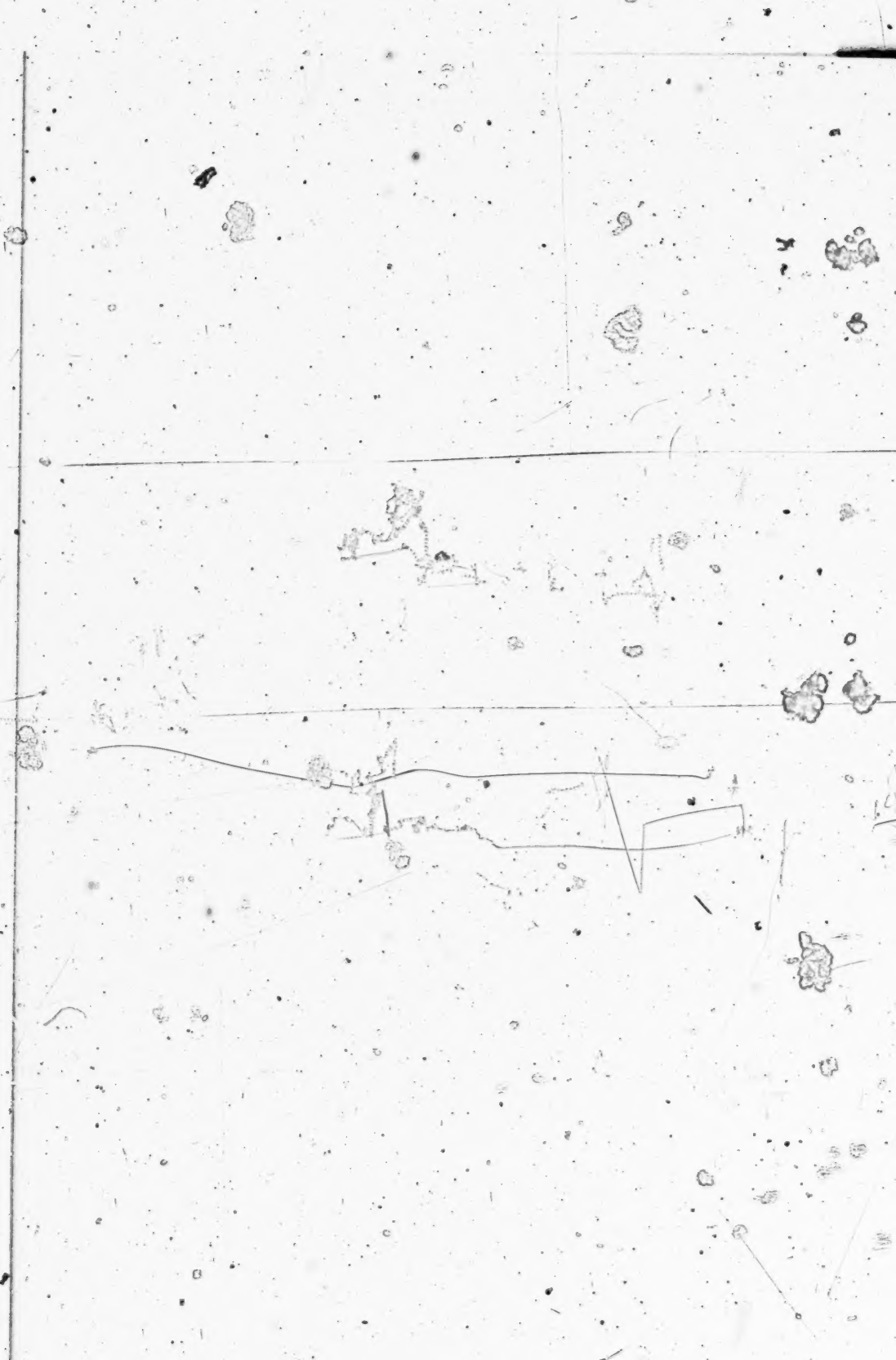
—vs.—

WATERMAN STEAMSHIP CORPORATION,
Respondent.

PETITION FOR LEAVE TO MOVE TO INTERVENE AND TO BE MADE PARTY.

Joseph Kovner
WILLIAM L. STANDARD,
Attorney for Petitioner.

ALPERT PRESS, 138 LIVINGSTON STREET, BROOKLYN, N. Y. TEL. TRIANGLE 5—1058-1059



IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 193. ORIGINAL.

NATIONAL LABOR RELATIONS BOARD, *et al.*,
Petitioner,

—vs.—

WATERMAN STEAMSHIP CORPORATION,
Respondent.

TO THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

NOW, comes the NATIONAL MARITIME UNION OF AMERICA, an unincorporated labor organization having its principal office and place of business in the City of New York, State of New York, by its attorney, WILLIAM L. STANDARD, Esq., and moves the Court for leave to file this petition to intervene and be made a party hereto.

I. Your petitioner shows unto your honors that the NATIONAL MARITIME UNION OF AMERICA is vitally interested in the issues of this appeal because it affects substantially the rights to employment of hundreds of its fifty thousand members on the vessels of the respondent, and because the said Union, and not the National Labor Relations Board, is the real party in interest on this appeal.

II. Prior to this appeal, said NATIONAL MARITIME UNION OF AMERICA participated in the conduct of this case before the National Labor Relations Board, as a party thereto, and

before the United States Circuit Court of Appeals for the Fifth Circuit, as an intervenor.

Upon charges filed by the NATIONAL MARITIME UNION OF AMERICA, the National Labor Relations Board issued its complaint, charging the Waterman Steamship Corporation with violations of Section 8, subdivisions (1) and (3), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, 49 Stat. 449. Upon this complaint, hearings were held before the National Labor Relations Board, in which the NATIONAL MARITIME UNION OF AMERICA was a party to the proceeding and participated therein by its counsel.

Thereafter, oral argument was had before the National Labor Relations Board, in which the NATIONAL MARITIME UNION OF AMERICA, by its counsel, participated.

III. On May 17th, 1938, the National Labor Relations Board duly issued its decision and order, wherein the National Labor Relations Board ordered the Waterman Steamship Corporation and its officers, agents, successors and assigns, in addition to a number of remedial actions, shall:

"1. Cease and desist:

(a) From refusing to issue passes to authorized representatives of the National Maritime Union of America in equal numbers, and under the same conditions, as it grants passes to the representatives of the International Seamen's Union of America, or its successor;

(b) From discouraging membership in the National Maritime Union of America, Marine Engineers Beneficial Association, or any other labor organization of its employees, by laying off, discharging, or refusing to reinstate any of its employees, or in any man-

ner discriminating in regard to their hire or tenure of employment or any terms or conditions of their employment;

* * * * * *

"2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Grant passes to authorized representatives of the National Maritime Union of America in equal numbers and under the same conditions as it grants passes to representatives of the International Seamen's Union of America, or its successors * * *."

IV. As appears from the decision and order of the National Labor Relations Board, the NATIONAL MARITIME UNION OF AMERICA, by virtue of that order, obtained a substantial interest in the enforcement of this order.

V. Thereafter, the Waterman Steamship Corporation, the respondent in the proceedings before the National Labor Relations Board, appealed to the United States Circuit Court of Appeals for the Fifth Circuit, to review and set aside the Board's order, and the National Labor Relations Board filed a cross-appeal, requesting the enforcement of its order. The NATIONAL MARITIME UNION OF AMERICA was granted leave to intervene in the said appeal by order of said Court, dated November 15th, 1938. Counsel for the NATIONAL MARITIME UNION OF AMERICA filed a brief in behalf of the NATIONAL MARITIME UNION OF AMERICA, as intervenor, and participated at the oral argument on the appeal.

VI. Subsequent thereto, and on April 11th, 1939, the Fifth Circuit Court, in a written opinion (reported in 103 Fed. 2d 157), issued an order granting the petition of the Waterman Steamship Corporation and vacating the order of the National Labor Relations Board, "except as modified and

approved as to C. J. O'Connor," a member of the Marine Engineers Beneficial Association.

This opinion of the Circuit Court adopted as a legal proposition the contention which the Waterman Steamship Corporation had urged in its brief before the said Circuit Court of Appeals. That proposition of law, never passed upon by this highest tribunal of the land, is succinctly summarized by the steamship company, as follows:

> "All of the members of the crews, as above suggested, were automatically laid off as a matter of law when their period of employment terminated according to the shipping articles signed by them at the time their voyage ended and not by any act of the Waterman Steamship Corporation. Their contract terminated and they were no longer employees of the Waterman Steamship Corporation and the only way they could again become employees of the Waterman Steamship Corporation would be by entering into a new contract with that company for some future voyage." (Page 16, respondent's brief in opposition to writ.)

This is the position which the company has consistently maintained, both before the National Labor Relations Board and before the United States Circuit Court of Appeals, in its brief for the reversal of the Board's order. This is the position which it now maintains before this Court, in opposing the writ sought herein.

VII. In *Peninsular & Occidental S. S. Co.* v. *N. L. R. B.*, 98 F. (2d) 411 (C. C. A., 5th, 1938), this same Circuit Court also seemed to adopt the view that a seaman's employment begins only with the signing on of articles, and terminates automatically, without any other affirmative act of discharge, at the conclusion of the voyage described in the articles. The NATIONAL MARITIME UNION OF AMERICA is deeply concerned with the question. Prior to these decisions of the Circuit

Court, it seemed to have been the prevailing view in the maritime industry that shipping articles, intended to benefit seamen, were required to be signed only so that conditions on shipboard with respect to health, food, civil rights, wages and hours of labor would be guaranteed them, and so that they would not be compelled to serve against their will on voyages of greater duration than they had been led to believe were intended, and not to automatically delimit the employment of seamen as these decisions would seem to indicate.

VII. As opposed to the contentions of the Waterman Steamship Corporation, *supra*, the NATIONAL MARITIME UNION OF AMERICA is, therefore, primarily interested as a proponent of the contentions that:

1. The signing on and the signing off of shipping articles is but an incident in what is, in most instances, a long term employment of seamen.

2. The employment relationship existed independently of the signing of articles, for in entering into the employment herein, neither employer nor employees intended that the signing on and off of shipping articles were to begin and end the term of employment, and, similarly, neither party intended the shipping articles to be the full and entire contract of employment.

3. In and of itself, therefore, the signing off of shipping articles in the instant case did not affect the tenure of employment of the seamen herein until the respondent, by a separate affirmative act, chose to terminate the existing employer-employee relationship because of the seamen's change of union affiliations.

4. Since the discharge which accompanied and followed the signing off of articles could not be justified on the ground that the employer-employee

relationship had been terminated, the discharge terminating the tenure of employment, as a matter of law, was a violation of Section 8, subdivisions (1) and (3) of the National Labor Relations Act.

5. The discharges which followed the signing off of shipping articles did not lawfully create such vacancies as to warrant the hiring of a full crew of I. S. U. seamen under the obligations allegedly imposed upon the Waterman Steamship Corporation by the International Seamen's Union preferential contract.

With reference to the other points raised, the NATIONAL MARITIME UNION OF AMERICA rests upon all of the arguments advanced by the National Labor Relations Board.

IX. In order to prove its contention that the expiration of shipping articles does not automatically terminate the employment of seamen, the NATIONAL MARITIME UNION OF AMERICA wishes to present to this Honorable Court the historical background of, and; the subsequent passage of laws relating to; shipping articles and their relation to modern maritime custom and industry.

X. The NATIONAL MARITIME UNION OF AMERICA seeks to join with the National Labor Relations Board in its appeal for a reversal of the judgment of the Circuit Court of Appeals for the Fifth Circuit, vacating and setting aside the order of the National Labor Relations Board, and for appropriate relief enforcing the order of the said National Labor Relations Board in the instant case.

XI. All of the testimony pertinent to this issue has been printed as required by the rules of this Court and your petitioner will require no additional printing of the record.

WHEREFORE, the NATIONAL MARITIME UNION OF AMERICA, by its attorneys, prays for an order permitting it to intervene and be made a party plaintiff to this suit, and to file its brief, and for time for oral argument on the appeal, and for such other and further relief as may seem meet.

NATIONAL MARITIME UNION OF AMERICA
Petitioner

By William L. Standard
WILLIAM L. STANDARD
Attorney for Petitioner.

11/3/39

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

WILLIAM L. STANDARD, being duly sworn, deposes and says:

That he is the attorney for the petitioner in the foregoing petition; that he has read the said petition and has personal knowledge of the matters and things therein set forth, and believes the same to be true.

Affiant further states that the petition for leave to move to intervene and be made a party plaintiff is prepared and filed in the utmost good faith, believing that the same is meritorious, and that the said petition is not presented and prepared in order to be vexatious and to delay the final opinion and judgment in the case.

Affiant further states that he is a member of the bar of this Court.

William L. Standard
WILLIAM L. STANDARD.

Subscribed and sworn to before me this
3rd day of November, 1939.

Abraham Weisberg
ABRAHAM WEISBERG,
Notary Public, Kings County,
Kings Co. Clk.'s No. 55, Reg. No. 162,
N. Y. Co. Clk.'s No. 186, Reg. No. O-W-122.
Commission expires March 30, 1940.

I, WILLIAM L. STANDARD, do hereby certify that on this 6th day of November, 1939, I forwarded, with postage prepaid, copies of the foregoing petition to GESSNER T. MCCORVEY, ESQ., counsel for respondent, Waterman Steamship Corporation, at 9th Floor, Merchants National Bank Building, Mobile, Alabama, and to CHARLES FAHY, ESQ., General Counsel National Labor Relations Board, at Shoreham Building, Washington, D. C.

Executed this 6th day of November, 1939.

William L. Standard

WILLIAM L. STANDARD.

I, WILLIAM L. STANDARD, do hereby certify that on this 3rd day of November, 1939, I sent a telegram prepaid to GESSNER T. MCCORVEY, ESQ., counsel for respondent, Waterman Steamship Corporation, at 9th Floor, Merchants National Bank Building, Mobile, Alabama, and to CHARLES FAHY, ESQ., General Counsel, National Labor Relations Board, at Shoreham Building, Washington, D. C., stating in words as follows:

> "The Undersigned, as Attorney for the National Maritime Union, will move on November 7th, 1939 before the Supreme Court for leave to intervene and be made a party in the case of *National Labor Relations Board* v. *Waterman Steamship Corporation*."

Executed this 3rd day of November, 1939.

WILLIAM L. STANDARD.

William L Standard

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 193.

NATIONAL LABOR RELATIONS BOARD, *et al.*
Petitioner

vs.

WATERMAN STEAMSHIP CORPORATION
Respondent

PETITION OF AMERICAN FEDERATION OF LABOR FOR LEAVE TO INTERVENE.

CHARLTON OGBURN,
Attorney for Petitioner.



IN THE

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 193.

NATIONAL LABOR RELATIONS BOARD, *et al.*
Petitioner

vs.

WATERMAN STEAMSHIP CORPORATION
Respondent

TO THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The American Federation of Labor, an unincorporated association, having its office and place of business in Washington, District of Columbia, by its attorney, Charlton Ogburn, petitions this Honorable Court for leave to intervene in the above case and be made a party thereto or to be allowed the privilege of oral argument as *amicus curiae*, and shows to this Honorable Court:

1. Your petitioner, through its committee known as the Seamen's Reorganization Committee, was a party in the proceeding before the National Labor Relations Board known as the Board's case No. C-375, and by counsel, participated in the trial of the case before the examiner of the Board and participated by argument before the three members of the Board on the exceptions filed to the examiner's intermediate report.

2. The American Federation of Labor filed a brief *amicus curiae*, with the consent of both parties, before the

United States Circuit Court of Appeals, Fifth Circuit, on the petition for review of the order of the National Labor Relations Board brought by the Waterman Steamship Corporation.

3. The American Federation of Labor as *amicus curiae*, with the consent of the parties, filed a brief in the Supreme Court of the United States, October Term, 1939, in opposition to petition for writ of certiorari applied for by the National Labor Relations Board to the United States Circuit Court of Appeals, Fifth Circuit.

4. There are two vital questions in the case before this Honorable Court which the American Federation of Labor earnestly desires its counsel to argue orally before this Honorable Court in order, first, to protect the validity of union contracts through a proper construction of their terms and, secondly, in order to uphold the hard-earned rights of American seamen, which the American Federation of Labor considers would be endangered by a reversal of the decision of the U. S. Circuit Court of Appeals, Fifth Circuit. The first question involves essentially a construction of a salient clause in the contract between the Waterman Steamship Corporation, the respondent, and the International Seamen's Union which was chartered by and was affiliated with the American Federation of Labor, having exclusive jurisdiction of all seamen constituting the unlicensed personnel of the American merchant marine. The following is the clause of said contract, upon the proper construction of which may well be predicated the decision which this Honorable Court will reach in this case:

> "Article II. Section 1. It is understood and agreed that as vacancies occur, members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qual-

ify to fill the respective positions; provided, however, that this Section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt reshipment, or absence due to illness or accident."

5. The other salient point which the American Federation of Labor considers it important to have the privilege of arguing orally before this Honorable Court is the proper construction of shipping articles which had been signed by the members of the two crews, the order for whose reinstatement by the National Labor Relations Board was vacated by the United States Circuit Court of Appeals for the Fifth Circuit. The American Federation of Labor desires to have its counsel argue before this Honorable Court the historic development of federal legislation enacted from time to time for the protection of seamen, including the proper construction of shipping articles and especially the rights obtained for seamen, as embodied in the existing federal statutes, and petitioner feels it cannot with entire safety leave the protection of these rights of seamen in this case either to the Waterman Steamship Corporation, the respondent, or to the National Labor Relations Board who have obtained the writ of certiorari to review the decision of the Circuit Court of Appeals, Fifth Circuit—a decision which the American Federation of Labor considered was in the interests of seamen's rights, both under the union contract and under the shipping articles.

6. The American Federation of Labor believes that the failure to construe properly and to uphold the validity of the union contract and of the shipping articles will seriously endanger the privileges and immunities now enjoyed by seamen which were obtained in part through the earnest and well-directed efforts of the late Andrew Furuseth, former President of the International Seamen's

Union, and of the late Senator Robert M. LaFollette. There is no party to this case who could or would make the argument the American Federation of Labor feels it is important for this Honorable Court to hear.

7. The interests of the rival union in this case, the National Maritime Union, affiliated with the C. I. O., are being protected by the National Labor Relations Board; but the position and interests of the American Federation of Labor, which it considers vital to protect, will be unrepresented before this Honorable Court, unless this petition be granted.

8. The American Federation of Labor would argue, if this petition be granted, for upholding the decision of the United States Circuit Court of Appeals for the Fifth Circuit.

WHEREFORE, the American Federation of Labor, by its counsel, prays for an order permitting it to intervene and be made a party in the case or else be allowed as *amicus curiae* the privilege of oral argument before this Honorable Court, and for such other and further relief as may seem meet.

AMERICAN FEDERATION OF LABOR,
Petitioner.

By CHARLTON OGBURN,
Attorney for Petitioner,
68 William Street,
New York, N. Y.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

CHARLTON OGBURN, being duly sworn, deposes and says that he is the attorney for the petitioner in the foregoing petition; that he has read the petition and has personal knowledge of the matters therein set forth and believes the same to be true; that the petition for leave to intervene has been made upon the specific authorization and instruction of President William Green of the American Federation of Labor, believing that the same is meritorious and important for the American Federation of Labor to file.

Affiant further states that on the 8th day of November, 1939, by letter addressed to Gessner T. McCorvey, Esq., Mercantile National Bank Building, Mobile, Alabama, attorney for the respondent Waterman Steamship Corporation, affiant informed the respondent that upon the authorization of President Green of the American Federation of Labor he would move to intervene and have the American Federation of Labor made a party in this case; and affiant further states that on the 10th day of November, 1939, he sent telegram to the Honorable Charles Fahy, General Counsel of the National Labor Relations Board, Shoreham Building, Washington, D. C., as follows:

> "UPON AUTHORIZATION AND INSTRUCTION OF PRESIDENT GREEN OF AMERICAN FEDERATION OF LABOR, I INTEND TO MOVE ON NOVEMBER FOURTEENTH BEFORE THE SUPREME COURT OF THE UNITED STATES FOR LEAVE TO INTERVENE ON BEHALF OF THE AMERICAN FEDERATION OF LABOR IN THE CASE OF NATIONAL LABOR RELATIONS BOARD V. WATERMAN STEAMSHIP CORPORATION."

Affiant similarly on the 10th day of November, 1939, informed the National Maritime Union of his intention to

move to intervene on behalf of the American Federation of Labor. Affiant further states that he has been requested by the counsel of the Waterman Steamship Corporation to intervene as counsel for the American Federation of Labor in this case; and affiant believes that the National Labor Relations Board will consent to this petition for intervention being granted as it did consent to the briefs filed before the U. S. Circuit Court of Appeals, Fifth Circuit, and before this Honorable Court in opposing the writ of certiorari.

CHARLTON OGBURN.

Sworn to before me this
10th day of November, 1939.

ETHEL L. RUSSELL
Notary Public, Queens County
Queens Co. Clk's No. 3290
N. Y. Co. Clk's No. 983 Reg. No. 1R571
Commission expires March 30, 1941

SUPREME COURT OF THE UNITED STATES.

No. 193.—October Term, 1939.

National Labor Relations Board, Petitioner, *vs.* Waterman Steamship Corporation.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[February 12, 1940.]

Mr. Justice Black delivered the opinion of the Court.

The Court below, upon petition of respondent to set aside an order of the Labor Board, decided that the Board's order was not supported by substantial evidence, said the order was based on mere suspicion, and declined to enforce it. Whether the court properly reached that conclusion is the single question here.

We do not ordinarily grant certiorari to review judgments based solely on questions of fact. In its petition, however, the Board earnestly contended that the record before the Court of Appeals had presented "clear and overwhelming proof" that the Waterman Steamship Company had been guilty of a most flagrant mass discrimination against its employees in violation of the National Labor Relations Act, and that the court had unwarrantedly interfered with the exclusive jurisdiction granted the Board by Congress. The Board's petition also charged that the present was one of a series of decisions in which the court below had failed "to give effect to the provisions of the Act that the findings of the Board as to facts, if supported by evidence, shall be conclusive."[1]

In that Act, Congress provided, "The findings of the Board, as to the facts, if supported by evidence, shall . . . be conclusive."[2] It is of paramount importance that courts not encroach

[1] The Board specifically referred to National Labor Relations Board *v.* Bell Oil and Gas Co., 98 F. (2d) 406, rehearing denied 98 F. (2d) 870 (also, 91 F. (2d) 509; 98 F. (2d) 405; 99 F. (2d) 56); Peninsular and Occidental S. S. Co. *v.* National Labor Relations Board, 98 F. (2d) 411, certiorari denied, 305 U. S. 652; Globe Cotton Mills *v.* National Labor Relations Board, 103 F. (2d) 91.

[2] 49 Stat. 449, Sec. 10(e).

upon this exclusive power of the Board if effect is to be given the intention of Congress to apply an orderly, informed and specialized procedure to the complex, administrative problems arising in the solution of industrial disputes. As it did in setting up other administrative bodies, Congress has left questions of law which arise before the Board—but not more—ultimately to the traditional review of the judiciary. Not by accident, but in line with a general policy, Congress has deemed it wise to entrust the finding of facts to these specialized agencies. It is essential that courts regard this division of responsibility which Congress as a matter of policy has embodied in the very statute from which the Court of Appeals derived its jurisdiction to act. And therefore charges by public agencies constitutionally created—such as the Board—that their duly conferred jurisdiction has been invaded so that their statutory duties cannot be effectively fulfilled, raise questions of high importance. For this reason we granted certiorari.[3]

Respondent, Waterman Steamship Company, of Mobile, Alabama, is engaged in maritime transportation between this country, Europe, and the West Indies. Upon complaint made by the National Maritime Union, a labor organization affiliated with the Committee for Industrial Organization, the Board held hearings and found that respondent had, at Mobile, laid up the ships "Bienville" (27 days) and "Fairland" (7 days) for dry-docking and repairs, and had, in violation of the National Labor Relations Act:

(a) discharged and refused to reinstate, because of membership in the N. M. U., the entire unlicensed crew and the chief steward, Edmund J. Pelletier, of the Steamship "Bienville", and all but three of the crew of the Steamship "Fairland";

(b) discharged and refused to reinstate C. J. O'Conner, second assistant engineer of the "Azalea City" because of his activities in representing aggrieved members of the Marine Engineers Beneficial Association, a labor organization of licensed ship personnel affiliated with the C. I. O.;

(c) and, pending an election directed by the Board to permit the ships' crews to select their bargaining agencies, had interfered with its employees' free right to select a union of their own choosing under Section 7 of the Act by refusing to grant ships' passes to

[3] — U. S. —. Cf. Federal Communications Commission v. Pottsville Broadcasting Co., decided January 29, 1940.

representatives of the C. I. O. affiliate, while at the same time issuing passes to representatives of the International Seaman's Union affiliated with the American Federation of Labor.[4]

The Board's order in question was based on the foregoing findings.

A clear understanding of the issues presented by the mass discharge of the crews of the "Bienville" and the "Fairland" necessitates initial reference to the Federal laws governing engagement of seamen for foreign voyages. There is provision, 46 U. S. C. 564, that a master of any vessel bound from the United States to foreign ports (with exceptions not pertinent) "shall, before he proceeds on such voyage, make an agreement, in writing or in print, with every seaman whom he carries to sea as one of the crew . . . . ." This written agreement, commonly referred to in maritime circles as articles, must specify the nature and duration of the intended voyage or engagement; the port or country at which the voyage will terminate; the number and description of the crew and their employments; the time each seaman must be on board to begin work and the capacity in which he is to serve; wages; provisions to be furnished each seaman; regulations to which the seaman will be subjected on board such as fines, short allowance of provisions or other lawful punishments for misconduct; and stipulations of any advance and allotment of the seaman's wages. And the provisions of 46 U. S. C. 567-8 impose penalties for carrying seamen in ships' crews on foreign voyages without entering into the required articles. All seamen "discharged in the United States from merchant vessels engaged in voyages . . . to any foreign port . . . . shall be discharged and receive their wages in the presence of a duly authorized shipping commissioner . . . . ." *Id.* 641. The master and each seaman shall "in the presence of the shipping commissioner, . . . sign a mutual release of all claims for wages *in respect of the past voyage or engagement*"; the release must be re-

[4] In outline, the Board ordered the Waterman Company to cease and desist from issuing ships' passes to the A. F. of L. on a favored basis as compared to the C. I. O.; from discouraging membership in C. I. O. affiliates by discriminating against its members; and from interfering with its employees' rights of self-organization and free collective bargaining. It affirmatively ordered the Company to grant equal passes to the C. I. O. and the A. F. of L., if granted to either; to make whole and offer full reinstatement to those employees found to have suffered discrimination; and to post appropriate notices on the Waterman vessels.

corded in a book which shall be kept by the commissioner, and such release "shall operate as a mutual discharge and settlement of all demands for wages between the parties . . . , on account of wages, in respect of the *past voyage or engagement*". *Id.*, 644. (Italics supplied.)

Respondent, the Waterman Company, has taken the position that when the crews of the "Bienville" and "Fairland" received their wages and signed off statutory articles in Mobile, all tenure of employment and employment relationship of these men were at an end. From this premise, the Company insists that vacancies were created as the men signed off and, under an outstanding contract with the I. S. U., preference in filling these vacancies had to be given to members of the I. S. U. unless contractual obligations were to be violated.[5] However, the Board contends that the signing off of articles when the ship's voyage ended at Mobile served only to end employment "in respect of the past voyage or engagement" and, therefore, it proceeded to examine the evidence to determine whether there was, after completion of the voyages in question of the "Bienville" and "Fairland", a continuing relationship, tenure, term or condition of employment between the Company and its men. The Act provides[6] that

"It shall be an unfair labor practice for an employer to interfere with . . . [the employees' right of self-organization].

"By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: . . . ."

The protection to seamen embodied in the Federal statutes which have been referred to has existed in some form since the earliest days of the Nation.[7] This statutory plan was never intended to forbid

[5] In part, that contract reads: "Section 1. It is understood and agreed that as vacancies occur, members of the International Seamen's Union of America, who are citizens of the United States, shall be given preference of employment, if they can satisfactorily qualify to fill the respective positions; provided, however, that this Section shall not be construed to require the discharge of any employee who may not desire to join the Union, or to apply to prompt reshipment, or absence due to illness or accident." Only the discharge of Pelletier is claimed by the Company to have been due to incompetency. The Court below held that O'Connor had taken a vacation and was not discharged, and was thus entitled to vacation pay and reinstatement; the Board had ordered that O'Connor be made whole "for any loss of pay" suffered as a result of the Company's acts which the Board found had been discriminatory.

[6] 49 Stat. 449, 452, Sec. 7, 8.

[7] See 1 Stat. 131.

the parties from mutually undertaking to assure a crew the right to continue as employees and to re-sign if it desires after signing off articles at a voyage's end. The design was to protect seamen from being carried to sea against their will; to prevent mistreatment as to wages and to assure against harsh application of the iron law of the sea during voyages.[8] The Board, therefore, properly heard evidence as to whether the crews of the "Bienville" and "Fairland" had, unless discharged for cause, a continuing tenure or relationship entitling them to re-sign when the temporary lay-ups of their ships ended. If, as the Board found, there were such continuing tenure and customary term or condition of employment, of course no vacancies occurred when the men of the "Bienville" and the "Fairland" signed off articles in Mobile. And respondent's contract with the I. S. U., which only provided preferential treatment of the I. S. U. (A. F. of L.) in filling vacancies, did not require the Company to discharge the N. M. U. (C. I. O.) men from these ships.

If, therefore, there was substantial support in the evidence for the findings that these crews had a continuing right to and customary tenure, term or condition of employment within the purview of the Act even though their ships were temporarily laid up, and that this relationship was terminated by the Company because of the crews' C. I. O. affiliation, the court below was required to enforce the Board's order.

Evidence as to the continuing tenure, and conditions and relation of employment. On the basis of nine to ten years at sea, one witness testified that a ship's crew is customarily kept on when she goes into dry dock and is laid up for temporary repairs; and that both the Waterman Company and the unions had observed that custom. Another, with a background of ten years experience at sea, in visiting some fifty ships in dry dock at Mobile during the preceding few months had learned of forty-nine which had not laid off their entire crews but had kept a substantial number of their crews working aboard ships; the fiftieth had laid off its entire crew after going into dry dock, but "the company kept the jobs open." He knew of

[8] See Lent Traffic Co. *v.* Gould, 2 F. (2d) 554, 556; United States *v.* Westwood, 266 Fed. 696, 697; The Occidental (D. C.), 101 Fed. 997. As to the history of this legislation, see United States *v.* The Brig Grace Lathrop, 95 U. S. 527.

one vessel that had remained in dry dock for a period of forty-five days and maintained its crew during that period", several which had done so recently for thirty-day periods, and many for periods "from five to ten days, fifteen days." He had himself been a member of a crew maintained in its entirety while his ship was in dry dock for twenty-two days.

An oiler and deck engineer, with eight years in the service, had been on a Waterman ship which, as recently as 1936, spent six days in repairs, keeping its crew on; and had "known them to stay on fifteen or twenty days and continue working that long." Asked what obligation an employer owes a sailor after the latter returns from a foreign voyage, completes his contract under the ship's articles, is paid off and discharged before a Shipping Commissioner, he answered "If my services are satisfactory and my work efficient, I have the right to stay on that ship, if I have not done anything to be discharged for. Why shouldn't I make another trip? . . . Q. Is it true to state that a seaman's job is still existent, although he may not be drawing pay while the boat is tied up for repairs? A. Yes, sir. Q: There is no vacancy in his job? A. No; there is no vacancy."

The chief steward of the "Bienville", employed by Waterman since 1934 and a seaman since 1918, testified that crews of ships in dry dock—tied up for repairs for a few days—"have to do their work and get paid for it by the Waterman Steamship Corporation" and unless they quit or are fired "for cause" there is no vacancy. The giving of a discharge according to the ship's articles, he understood "to be a termination of the voyage, but not a termination of the employment."

Although at sea but three years, a fireman and oiler testified that he had been re-signed, upon the termination of articles, after each of fourteen trips on a single ship, from Southern ports including Mobile, had been kept as a member of a crew on a ship in for repairs nine days and had "known of one ship that was laid up [for lack of cargo] for five weeks and the crew went back."

A marine fireman, oiler and watertender, at sea since 1922, had been on a Waterman ship in for repairs ten or twelve days, the crew of which was retained only in part, but those laid off "were notified when the ship went into commission they can go out again."

He "was on one [ship] that stayed two months in dry dock . . . just part of the crew . . . [were kept on, but] the whole crew was there for their jobs when she was commissioned again." He had never heard of a mass discharge of an entire crew such as occurred on the "Bienville" and "Fairland". In part, the testimony of this former I. S. U. member was: "Q. Do the unions consider that there is no vacancy until a man resigns? A. Yes; they do not figure it is any vacancy until they call the [Union] Hall for another man."

A seaman in the employ of the Waterman Company intermittently since 1924, had been on a Waterman boat which kept its whole crew during six or seven days in dry dock. It had been his experience that a crew was kept on ships in dry dock or being repaired, unless a ship was to be laid up indefinitely, i. e., for two or three months, in which event only a skeleton crew would be maintained. But, he added, the Waterman Company itself follows the custom of "calling back to the ship" men who have been laid off indefinitely and "are still around," and men standing idly by without pay at the end of a voyage still regard themselves in the employ of the shipowner.

One witness had served as a fireman on a Waterman ship that spent the period between the first of November and Thanksgiving of 1932 in dry dock and undergoing repairs; she kept "approximately all of" her crew aboard ship working during this period; a few were permitted to go home in the interim, but returned when she started her voyage. On another occasion, he testified, the same Waterman boat stayed in dry dock about sixty days, retaining approximately the entire crew; although after five days in dry dock he was called out of town to appear as a witness, he later got his job back. In his capacity as a shipyard worker in which he was employed at Mobile at the time of this hearing, this same witness observed "we have boats coming in from twenty-five up to thirty days . . . and the crew works in there, and they may want to lay off part of the crew, or work a major part, or maybe they will be discharged, but those that want to go back, their jobs is open if they wish them." Of some six hundred ships he had seen or worked on in dry dock or being repaired, he had seen but one complete discharge of an entire crew, but even that crew were told they could come back "if they wanted their jobs." According to his understanding and that of seamen as he knew it, articles

"were protection to the seamen by the United States Government for a certain voyage, and to a certain port, or your final port of discharge or first loading port. That is a termination of the articles to the seaman, but not the end of the employment."

A witness who had worked for the Waterman Company since 1929, who had been a marine engineer for fourteen years, and at sea twenty years, testified that a crew which is laid off is customarily re-employed when a ship emerges from dry dock, unless laid off "for cause." A Waterman ship, on which he had been at the time serving, laid up in Mobile from December, 1936, to about January 25, 1937, "and the engineers were kept on her, and to the best of my knowledge the firemen and watertenders and oilers were kept on there."

The executive vice-president of the Waterman Company recalled that recently the crew of only one other vessel going in for repairs had been discharged, and that this particular crew also had been affiliated with the N. M. U. (C. I. O.). Of the several Waterman vessels which he mentioned as having been put up in Mobile for dry-docking or repairs during the previous year, he could note only the one that had not kept its entire crew (other than the "Bienville" and "Fairland"); the one other crew that was discharged en masse, he admitted, was the one other also affiliated with the C. I. O.

The witness who had been captain of the "Fairland" when she went into dry dock, had served the Waterman Company continuously since 1924, with the exception of one year, in capacities ranging from ordinary seaman to ship's master. Yet, in all his experience with the Company, he had never heard of a ship in dry dock that had laid off her entire crew. And Waterman's port captain, a veteran of twenty-four years, had taken perhaps a half dozen of Waterman ships into dry dock, never staying more than twenty-four hours in dry dock but with a total of eight to ten days in port, and his crews were never laid off; he preferred to retain a crew for a succeeding voyage.

In the very contract which the Waterman Company made with the I. S. U. there are terms providing that "IN HOME PORT, all men may be required to work eight (8) hours daily . . . [with provision for overtime]." And the section of the contract covering preference for I. S. U. men "shall not be construed to re-

quire the discharge of any employee who may not desire to join the [I. S. U.] . . . ." That the contract contemplated an employment independent of the articles and subject to termination in a manner other than by the mere expiration of articles, is apparent from the provision that "Nothing in this agreement shall prevent . . . [the Company] from discharging any member of the crew who is not satisfactory to the Company."

All the evidence on this issue which the Board had before it has, of course, not been set out. In summary, it is glaringly apparent that men who had in various capacities followed the sea in the aggregate for roughly a hundred years, offered testimony that a seaman's tenure and relationship to his ship and employer are not terminated by the mere expiration of articles when his ship lays up in dry dock or for repairs, and that the Waterman Company—and maritime people generally—have recognized and followed this custom. Even the Waterman Company's executive vice-president could cite only one instance in the Company's recent past in which this custom had been departed from, but that particular mass firing of the crew of a ship headed for a temporary lay-up was directed against the only C. I. O. crew, other than those of the "Bienville" and "Fairland", with which the Waterman Company apparently had been asked to deal. And the master of the "Fairland", with personal knowledge of the Company's practice reaching back to 1924, had never heard of "another case where the entire crew was laid off."

In the words of the Act, an employer cannot terminate his employees' "tenure of employment or any term or condition of employment"[9] because of union activity or affiliation. These words are not limited so as to outlaw discrimination only where there is in existence a formal contract or relation of employment between employer and employee. They embrace, as well, all elements of the employment relationship which in fact customarily attend employment and with respect to which an employer's discrimination may as readily be the means of interfering with employees' right of self-organization as if these elements were precise terms of a written contract of employment. The Act, as has been said, recognizes the employer's right to terminate employment for normal reasons.[10] No obstacle of legal principle barred the Board from

[9] Sec. 8, (1), (3).

[10] Labor Board v. Jones & Laughlin, 301 U. S. 1, 45.

finding that there was, even after the ships were temporarily laid up, a relationship of employment or tenure between the Waterman Company and its men. That there may be a tenure or term of employment determinable at will is a recognized principle of law.[11] For the purpose of the Act, it is immaterial that employment is at will and terminable at any time by either party.[12] A large part of all industrial employment is of this nature. For illustration, factory workers are customarily employed at will, without obligation of employer or employed to continue the relationship when the day's work is done; or, if there is an agreement fixing salary or wages per unit of service, at so much per day, week or month, there may be an indefinite employment terminable by either party at the end of any unit period. But when such employees are customarily continued in their employment with recognition of their preferential claims to their jobs, it cannot be doubted that their wholesale discharge at the end of the day or other unit period, in order to favor one union over another, would be discrimination in regard to the "tenure" or "condition" of their employment in violation of the Act. And employees under such tenure of employment as these seamen were have a right guaranteed by the Act that they will not be dismissed because of affiliation with a particular union.

Since the Board justifiably found that an employment relationship protected by the Act continued after the "Bienville" and "Fairland" were temporarily laid up, it becomes unnecessary to consider the additional finding of the Board that the "dates and durations of the particular lay-ups were arranged for the purpose of making it possible to discharge the crews because they had joined the N. M. U."

The sole question remaining is whether the evidence supported the findings of the Board that the employment or tenure of the crews and of O'Conner and Pelletier were terminated because they had joined or engaged in the activities of the C. I. O.

Evidence of discrimination because of C. I. O. affiliation. About July 1, 1937, the entire crew of the "Bienville" and all but

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11 See, e. g., Alabama Mills v. Smith, 237 Ala. 296; Peacock v. Virginia-Carolina Chemical Co., 221 Ala. 680; Great Atlantic & Pacific Tea Co. v. Summers, 25 Ala. App. 404, cert. den., 226 Ala. 635. Cf. U. S. F. & G. Co. v. Millonas, 206 Ala. 147, 29 A. L. R. 520.

12 Cf. Morgan v. Comm. of Int. Rev., decided January 29, 1940, p. 2; Lyeth v. Hoey, 305 U. S. 188, 193.

three of the "Fairland", previously I. S. U. (A. F. of L.), joined the N. M. U. (C. I. O.) in Tampa, Florida Such action had been decided on in June by the crew of the "Bienville" while she was in Le Havre, France. After the crew of the "Bienville" changed to the C. I. O. at Tampa and before she reached Mobile, the A. F. of L. representative at Tampa informed the A. F. of L. representative at Mobile, by telephone, that the change had taken place. And the Mobile A. F. of L. representative "at that time" notified the Waterman Company of the change. Intervening scheduled stops of the "Bienville" were cancelled by a memorandum purporting to have been written on July 1 and ordering her to Mobile to "go on inactive status for a period of about twenty days." The port captain of the Waterman Company, who signed this memorandum, stated that it was written on July 1, "to the best of . . . [his] knowledge." He added that it had not been written until after the "Bienville" was on her return voyage from Le Havre. That was after the ship's crew had, in assembly, determined to turn C. I. O. No such cancellation was directed to the "Fairland". The "Fairland", he testified, was laid up because periodic repairs "were due." On the other hand, her master had no knowledge of any contemplated lay-up until she reached Mobile, and understood, according to advice given him, that she was laid up because "she was behind schedule . . . and they put her back to the next sailing." The Waterman port captain thought she was laid up because repairs "were due"; he had no knowledge that it was because she was behind schedule. Her master's testimony showed, "Q. The laying up plan, then, had been something that was contemplated in Tempa?

"No, Sir.

"Q. It was something that came into existence after you sailed from Tampa and before you came to Mobile, is that right?

"A. Yes."

The "Fairland" is equipped with radio.

The ships were in Mobile by July 6. There was testimony that a member of the crew of the "Bienville", on the sixth, was asked by the executive vice-president of the Company why the change of unions was made and was told by that official "a man has to use his own head." This same witness testified that several of the dis-

charged crew were given some work ashore and that "on a Saturday afternoon we collected three days pay, they held back two days in the week, and about three o'clock in the afternoon the first assistant came around there and I was working on some safety valves on the boilers, and . . . [the assistant port engineer of Waterman Company] said, 'Well, I got a chance to fire you at last,' and I said, 'What is that?' And he said, 'Well, you can get the rest of your money when you are finished,' and I said, 'What's the matter, aren't we going to sail the ship?'' And he said, 'No, not unless you go back to the other place,' and I said, 'What other place?' And he said, 'The I. S. U.'"

Pelletier, the steward on the "Bienville" worked for Waterman from 1934 until discharged after joining the N. M. U. (C. I. O.). When the "Bienville" arrived at Mobile, Waterman's port steward went to the boat, and talked with the mate, who informed him that some of the men had joined the N. M. U. According to the port steward's testimony, he then asked the mate, "How is the Steward's Department?" and the mate replied, "Well some of them joined the N. M. U. . . . and later on I [the port steward] found the steward in his room. . . . I asked Pelletier did he join the N. M. U. and he said 'Yes', and I said 'What about the rest of your crew?' and he said 'Well, they all did.' I asked him did they have any reason for it, and he said, 'Yes, everybody did', so I said 'All right' and I left the ship." He returned to the Company's office. Two hours later, he came back to the ship, charged Pelletier with incompetency and discharged him. Pelletier testified that the port steward, when told that the crew and Pelletier had turned N. M. U. said, "Well I have got orders to lay you all off." Pelletier had been promoted just prior to the voyage in question. A new I. S. U. man was put on to finish up his work and remained on as watchman practically the full time the "Bienville" was laid up.

Although her captain had, prior to the coming aboard of a Company official, expressed a desire to keep the "Fairland's" crew, as one of her crew testified, the crew was informed by this official that they could not sail, "but if you take your books and give them to . . . the I. S. U. you can keep your jobs;" another Waterman official "told me I could not sail on any Waterman steamship as long as I was an N. M. U. man." According to this witness, he had left his clothes on the "Fairland" and slept aboard ship when

she was in dry dock with the understanding he would re-sign; he was, however, ordered off the ship.

An engineer on the Waterman vessel "Azalea City", eight years with the Company, O'Conner, a member of the M. E. B. A., (also affiliated with the C. I. O.) testified that he acted as spokesman for other engineers on his ship in complaining about working conditions, hours of employment and rates of pay; when he discussed the complaint with the Company's representative, during July, he was told to take a vacation and left the ship on a promise of a more desirable job; neither the vacation, the promised job, nor re-employment of any kind was ever given him. Waterman's executive vice-president had never had an engineer act in such a representative capacity relative to asserted violations of a union contract. And the assistant port engineer stated that it was the custom to call a man of O'Conner's rank when not on vacation; that O'Conner had been promised and then denied a vacation, but had not been called although work had been available; and, in addition that O'Conner had in conversation with him asked "Would Waterman give me employment."

The executive vice-president of the Company would not "until the actual time came" answer the query whether he would reinstate the N. M. U. men even if there were no contract with the I. S. U. He stated that he had received a wire from the Board's regional Director at New Orleans on July 7, recommending and insisting on reinstatement of N. M. U. men dismissed at Mobile, and did not deny that he had first told the Director that his reason for not working N. M. U. men was the existence of the I. S. U. contract. He admitted, however, that later on the same day his decision that the men were removed because the vessels were laying up was attributable to an apparent change of his own mind.

Additional evidence that the discharged N. M. U. men were again treated with discrimination in the allotment of repair work on the "Bienville" and "Fairland"; and were laid off in a block even from this work—all tended to buttress and illuminate the Board's finding that the tenure of employment of these men of the "Bienville" and "Fairland" was cut short because they had exercised their lawful right to join the C. I. O. One of the men who was given temporary repair work—subsequent to the Board's telegram of the seventh—testified:

"Q. While you were a member of the N. M. U., did you ever wear your N. M. U. badge or button?

"A. Yes, sir; I used to wear it on my cap, on the dock while I was working down there.

"Q. Was there anything ever said to you at the Waterman Steamship about wearing it?

"A. Mr. Ingram told me I would have to take that Maritime Union button off if I wanted to stay around there, and I took it off, and put it in my pocket."

From all this evidence, there can be no doubt of the substantial support for the Board's finding that the crews, O'Conner and Pelletier all lost their jobs because of C. I. O. affiliation and activities.

Evidence of Discrimination as to ships' passes.—The Board found "that the respondent, by issuing passes to representatives of the I. S. U. and refusing to grant such passes to representatives of the N. M. U. for the same purpose and under the same conditions, had interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7 of the Act."[13] An election to permit a choice of bargaining agency by the crews has been directed but has not been held pending termination of the present proceeding.[14]

Upon this issue of discrimination concerning passes, N. M. U.'s representative testified that the Company's executive vice-president, about September 24 or 25, 1937, refused his request "for passes for the election of the N. L. R. B." because of the I. S. U. contract. But no provision of the I. S. U. contract referred to ships' passes for representatives of other unions. The respondent's attorney took the position that N. M. U. representatives would not be permitted on board under any conditions. Testifying that I. S. U. representatives were permitted aboard the "Bienville" at all times to contact the men, Pelletier "did not recollect seeing anyone with them." Waterman's executive vice-president who pointed out that I. S. U. delegates were given passes on certain conditions, such as taking out insurance for delegates going aboard, did not know whether in fact there had been compliance by the I. S. U. with the conditions. He testified that he had issued instructions, July 13, to permit I. S. U. representatives aboard ship only to collect dues. But he also testi-

[13] The Board ordered, as to ships' passes, that the Company

"Cease and desist:

"From refusing to issue passes to authorized representatives of the National Maritime Union of America in equal numbers and under the same conditions as it grants passes to representatives of the International Seamen's Union of America or its successors; . . ."

[14] See 12 N. L. R. B., 766, 767, 769.

fied that they were still permitted to contact members. The master of the "Fairland" stated that he did not receive the instructions of July 13 until August; and that even after the instructions were put in effect, he permitted I. S. U. representatives to board ship unaccompanied; he did not know what they said to the men, whether they brought literature aboard or whether they restricted themselves to the collection of dues. Although always present at the paying off and signing off of articles, when the I. S. U. representatives collected dues, the Company's port captain "did not pay any strict attention whatever to what they were doing." Asked whether he knew what these representatives did at such times, he replied, "I did not follow them around to see what they were doing."

Enough has been shown to establish the reasons for the Board's decision that if the Company was to permit any opportunity for contact with the men, a fair election required that equal opportunities be given to both the C. I. O. and the A. F. of L. The control of the election proceeding, and the determination of the steps necessary to conduct that election fairly were matters which Congress entrusted to the Board alone.[15] Interference in those matters constituted error on the part of the court below.

All of this is not to say that much of what has been related was uncontradicted and undenied by evidence offered by the Company and by the testimony of its officers. We have only delineated from this record of more than five hundred pages the basis of our conclusion that all of the Board's findings, far from resting on mere suspicion, are supported by evidence which is substantial. The Court of Appeals' failure to enforce the Board's order resulted from the substitution of its judgment on disputed facts for the Board's judgment,—and power to do that has been denied the courts by Congress. Whether the court would reach the same conclusion as the Board from the conflicting evidence is immaterial and the court's disagreement with the Board could not warrant the disregard of the statutory division of authority set up by Congress.

The cause is reversed and remanded to the Court of Appeals with directions to enforce the Board's order in its entirety.

It is so ordered.

Mr. Justice MURPHY took no part in the consideration or decision of this case.

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[15] American Federation of Labor, et al. v. Labor Board, — U. S. —; Labor Board v. The Falk Corporation, — U. S. —.

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